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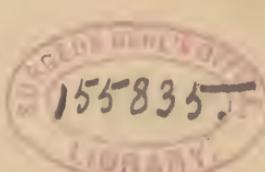
Vol. II.

BY CLARK BELL, Esq.

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DEDICATION.

To the Hon. David Dudley Field :

During all the years, in which I have been associated with the Medico-Legal Society and its work, you have been my warmest friend, and I know of no one who has done more to encourage and strengthen my labors than have you. For most of these years, you have been an active member, one of the patrons of the library, and deeply interested in the success of the Medico-Legal Society. It affords me a great pleasure, and I deem it a high honor, to dedicate this volume to you, as an evidence of the high personal regard I have ever felt for you.

NEW YORK, January, 1891.

CLARK BELL.

PRESS OF H. F. CLINTON,
220 and 222 William Street,
New York.



very truly yrs
E E Brumley

PREFACE.

In June, 1889, I published a volume entitled *Medico-Legal Studies*, volume one, containing some essays and writings upon subjects relating to Medical Jurisprudence that I had produced in the years 1887 and 1888.

This volume was limited to one hundred copies, and was intended only for presentation to personal friends.

The present volume is a continuation of the same studies, within the same domain, for the years 1889 and 1890.

I was first elected President of the *Medico-Legal Society* in November, 1872, holding that Chair for three terms, to the close of 1875. After six years, I was re-elected, serving three successive terms, from 1882 to 1885.

In January, 1887, I was re-elected, since which I have held that position, and I commenced my eleventh year of that service in January, 1891.

Prior to the publication of volume one, of *Medico-Legal Studies*, much of my labor in the fifteen years preceding 1887, had been published only in pamphlets and desultory sketches, and prior to the founding of the *Medico-Legal Journal* in June, 1883, had never been collected in volumes. These writings can only be found

in part, in the various newspapers and journals, that published the transactions of that Society.

This present volume is not a collection of the earlier work, but the product of what has been done in the last two years, in the advancement of the science of medical jurisprudence, and will best illustrate, to the future student of the science, my influence upon and relation to the work of the Medico-Legal Society, during a most eventful period of its history, and while its remarkable growth and development, national as well as international, was going forward. Whether I ever find the time to republish the earlier writings or not, it should be remembered, that the present volume dates from the later labors—with the exception of the single paper on the Coroners System, which was reproduced in the discussion of that subject before the International Medico-Legal Congress of 1889.

NEW YORK, February, 1891.

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THE RECENT JUDICIAL DEPARTURE IN INSANITY CASES.

BY CLARK BELL, Esq.,
President of the Medico-Legal Society of New York.

There is probably no race of men more devoted to, or controlled by, traditional rules and policy, than the ANGLO-SAXON.

What our fathers did, we accept without question or examination, and it takes half a century at least, to get an Englishman or his descendant, to be willing even to inquire, as to the *right* or *propriety*, of changing a rule in universal use and acceptance, by his ancestors.

By the ancient law of England, *madness*, was not a defence, on an indictment for murder.

If it appeared on trial that an accused was mad, there was such a special verdict, on which the Crown could pardon *

In the most notable cases of the last century, *Rex vs. Arnold* (16 St. Tr. 695—1724); *Rex vs. Lord Ferris* (19 St. Tr. 886—1760); *Rex vs. Hadfield*, (27 St. Tr. 1281—1800), these questions came up for discussion, and Lord Erskine's speech in defence of Hadfield, who was undoubtedly a lunatic, and in a state of furious mania, was then regarded as a masterly innovation, upon the existing state of the English law.

Up to the beginning of the present century, there was no authoritative decision, of the High Courts of England upon this question, and our only reported cases, are those

* 1 Rot. Par. 443; B. 3 Edws. 2 (1810); Fitz Herbert *cerone* 851; 3 Edws. 3 1330.)

of the simple dicta, of a single trial judge, in important criminal trials, as they came down to us, in the reported State trials of the eighteenth century.

SIR JAMES FITZ JAMES STEPHEN, by far the ablest writer upon the criminal law of England, in reviewing it historically, writing as late as his treatise on the "History of the Criminal Law of England" (1883), says:

"I know of no single instance, in which the Court for Crown Cases reserved, or any other Court, sitting in *banc*, has delivered a considered written judgment, on the relation of insanity to criminal responsibility, though there are several of such decisions, as to the effect of insanity on the validity of contracts and wills."**

The present state of the law of England may be said to be due, to the excitement growing out of the acquittal of McNAGHTEN, for the killing of Mr. Drummond in 1843, whom he shot, mistaking him for SIR ROBERT PEEL.

The medical evidence in that case was :

"That a person of otherwise sound mind might be affected with morbid delusions; that the prisoner was in that condition; that a person laboring under a morbid delusion might have a moral perception of right and wrong, but that, in the case of the prisoner, it was a delusion which carried him away beyond the power of his own control, and left him no such perception, and that he was not capable of exercising any control over acts which had a connection with his delusion; that it was the nature of his disease to go on gradually, until it reached a climax, when it burst forth with irresistible intensity; that a man might go on for years quietly, though at the same time under its influence, but would at once break out into the most extravagant and violent paroxysms. The questions left to the jury were: 'Whether at the time the act in question was committed, the prisoner had or had not, the use of his understanding, so as to know that he was doing a wrong and a wicked act; whether the prisoner was sensible at the time he committed the act, that he violated both the laws of God and man.'" (1 Russ. Cri. 121.)

The prisoner being acquitted, the House of Lords submitted to the judges certain questions, which were

* Stephen's Hist. Crim. Law of England, vol. 2, p. 152.

answered in June of that year, since which date the English judges in criminal trials have usually followed the language of the answers thus given.

The 2d and 3d questions submitted to the judges by the Lords, and their answers, were :

Question 2.—“What are the proper questions to be submitted to the jury when a person, afflicted with insane delusions, respecting one or more particular subjects or persons, is charged with the commission of a crime (murder, for instance), and insanity is set up as a defence ?”

Question 3.—“In what terms ought the question be left to the jury as to the prisoner’s state of mind at the time the act was committed ?”

Answers 2 and 3.—“As these two questions appear to us to be more conveniently answered together, we submit our opinion to be, that the jury ought to be told in all cases, that every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary, be proved to their satisfaction. That to establish a defence on the ground of insanity, it must be clearly proved, that at the time of committing the act, the accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality, of the act he was doing, or if he did know it, that he did not know he was doing what was wrong. The mode of putting the latter part of the question to the jury on these occasions has generally been, whether the accused, at the time of doing the act, knew the difference between right and wrong; which mode, though rarely, if ever, leading to any mistake with the jury, is not, we conceive, so accurate when put generally and in the abstract, as when put with reference to the party’s knowledge of right and wrong, in respect to the very act, with which he is charged. If the question were to be put as to the knowledge of the accused, solely and exclusively with reference to the law of the land, it might tend to confound the jury, by inducing them to believe, that an actual knowledge of the law of the land was essential in order to lead to a conviction; whereas the law is administered on the principle, that every one must be taken conclusively, to know it without proof that he does know it. If the accused was conscious, that the act was one which he ought not to do, and if the act at the same time was contrary to the law of the land, he is punishable, and the usual course, therefore, has been to leave the question to the jury, whether the accused had a sufficient degree of reason, to know that he was doing an act that was wrong; and this course we think is correct, accompanied with such observations and corrections, as the circumstances of each particular case may require.” (p. 127 *et seq.*)

It is not my purpose to go into a criticism of these answers in detail.

I shall content myself with stating that—

1. They were not the decision of any court of crimi-

nal jurisdiction, based upon evidence taken in a judicial proceeding.

2. That they are, as Sir James Stephen has so well stated : "Mere answers to questions which the judges were probably under no obligation to answer, and to which the House of Lords had probably no right to require an answer, as they did not arise out of any matter judicially before the House." (Ib. vol. 2., p. 154.)

3. The most that could be legally claimed for these answers, as to their legal binding force and effect, would be, that they were the individual opinions of fourteen out of fifteen of the then English judges, on answers to hypothetical questions, not in a judicial proceeding, and in a strictly legal and judicial sense, mere *obiter dicta*.

A critical examination of these questions and answers, will show, that the construction since given to them by English judges in criminal trials, has lent them a significance, force and I might say construction, not covered by the terms of the questions and answers themselves, because the answers are so closely confined to the narrow scope of the questions, as to leave many cases outside them, which might unthinkingly be supposed to be included in and covered by them.

Whatever may be thought or said, of these questions and answers, or of the course of the English judiciary in accepting these *dicta* of the judges, as a statement of the law, it is a fact that from 1843 to a very recent date, it has been usual for the English trial judges, to charge the jury, in cases where the defence of insanity was interposed, as to the question of responsibility:—

That it must be clearly proved "*that at the time of the committing of the act, the accused was laboring, under such a defect of reason from disease of the mind, as not to*

know the nature and quality of the act he was doing, or if he did know it, that he did not know he was doing what was wrong."

Sir James Stephen represents what I esteem to be the ablest and best legal view upon this subject when he says, speaking of the answers to the 2d and 3d questions : "That the form of the questions is very general, and the answers can hardly be meant to have been exhaustive. (Ib. p. 159.) That the word 'wrong' is ambiguous, as well as the word 'know.'

" It may mean either 'illegal' or 'morally wrong,' for there may be such a thing as illegality not involving moral guilt, and when we come to deal with madness, the question whether 'wrong' means 'morally wrong' or only 'illegal' may be important." (Ibid. 167.)

In an exhaustive analysis of the whole subject, the chapter on the relation of madness to crime in his masterly treatise, he concludes, that the true signification of these questions and answers, are not what they have been commonly stated by English judges to be, when he says :

" The proposition, then, which I have to maintain and explain is, that, if it is not, it ought to be the law of England, that no act is a crime if the person who does it, is at the time when it is done, prevented either by defective mental power, or by any disease affecting his mind, from controlling his own conduct, unless the absence of the power of control, has been produced by his own default. The first part of this proposition may probably appear to many persons to be self evident. How, it may be asked, can a man be responsible for what he cannot help ? That a man can be made responsible in the sense of being punished for what he cannot help is obvious. Whether he ought be made responsible, that is, whether it is expedient that people so situated should be punished in such cases, depends upon the question, What is meant by a man's not being able to help doing what he does ?" (Ibid. 163.)

It is important also to note, that the mere knowledge of right and wrong in the abstract sense, as involving a knowledge of the law of the land, is not suggested as the

best test by the judges, but the party's knowledge of right and wrong, in respect to the very act with which he is charged, and the trial judges have since usually followed this idea.

The medical profession of England at once put itself unanimously, against the view and practice of the English judges, who made the knowledge of right and wrong a test of responsibility for the insane. (Resolutions of the British Associations of Medical Superintendents, July 14, 1844.)

In some of the American States, the judiciary have followed the practice of the English judges, and charged juries, making the knowledge of right and wrong, the test of criminal responsibility, in cases of insanity, notably, New York, Pennsylvania, Massachusetts, Michigan, Alabama, Ohio, and many others.

Writers, however, on both sides the Atlantic, legal and medical, with few exceptions, denounce the test of "right and wrong" as laid down by the English judges, and hold it to be inconsistent with the progress of science, the civilization of the age, and contrary to the well known experience of mankind. Among legal writers aside from those cited, are J. Balfour Browne ;* Wharton and Stille ;† Bishop‡, on Criminal Law ; Wharton,§ Criminal Law ; Ordronaux;|| Lord Erksine in Hadfield's Case ; Lord Denman in *Rex vs. Oxford*, and many others later, while among medical men Ray,¶ Bucknill and Tuke,** Beck and indeed the whole profession of medical writers and thinkers, condemn this rule.

* Browne's Med. Jur. §§ 18 *et seq.*

† Wharton and Stille, § 59.

‡ 1 Bish. Criminal Law (7th ed.), § 386 *et seq.*

§ Wharton's Crim. Law, § 33, 34, 35.

|| Ordronaux on Insanity, 419.

¶ Ray's Med. Jur., § 16-19.

** Bucknell and Tuke, p. 269.

Among the English writers, however, Baron Bramwell not only defends the test, but justifies it on principle, and advances what he insists are strong logical reasons, why the insane should be punished, even with greater severity than the sane, for violations of law.

Sir James Stephen says : "It is, indeed, more difficult to say, why a dangerous, incurable madman, should not be painlessly put to death as a measure of humanity, than to show why a man who being both mad and wicked deliberately commits a cruel murder, should be executed as a murderer. (Hist. of Crim. Law, 78.)

The discussion of this subject has been unfortunately embittered, distracted, and I feel sure a reasonable solution delayed, by the intemperate language used by medical writers, in criticising the dicta of judges and the opinion of eminent lawyers, especially in Great Britain.

These assaults, so far as I have been able to find on a careful examination, have usually been the result of misconceptions in the medical mind. Objects sometimes seem to take on a color from the lens, through which we regard them, that they do not in fact have.

The mountain is not really blue or green ; it is the glass of our spectacles that produce, what seems to be a natural, but what is in fact a false effect.

I doubt if BARON BRAMWELL would have written his article in the *Nineteenth Century Magazine*,* except on provocation, given by medical writers, following such scathing denunciations as that with which Dr. HENRY MAUDSLY assailed the English Bench in his *Responsibility in Mental Disease*,† and like criticisms.

SIR JAMES STEPHEN well says : "Sarcasm and ridicule are out of place on the bench, in almost all conceivable

* Insanity and Crime, *Nineteenth Century Magazine*, Dec., 1885.

† Responsibility in Mental Disease, preface, p. vii.

cases." when commenting on quite as intemperate language from judges on the Bench, concerning medical expert witnesses. Let us hope that the era of temper and passion has past, and that we can now in both professions, law and medicine, discuss this important issue without passion, prejudice or violent language.

It may be proper to notice some of the positions assumed by BARON BRAMWELL in his paper, which is his personal view, and should not be construed as a judicial decision, or in any sense as of binding force, as a judicial statement of the law of England. It is, and, only claimed to be, his private opinion.

The law does not any where make, the mere fact of insanity, an excuse for or a defense to, a charge of crime.

Medical men ought not to contend, that the slightest disease of the brain, should exempt from responsibility, *per se*. The abler doubtless concede this. The question is or should be, how far does the delusion dominate the volition? Or in another class of cases, as Sir James Stephen puts it, "Was the accused deprived, by a disease affecting the mind, of the power of passing a rational judgment, on the moral character of the act, which he meant to do?"

On the trial of McNaghten, the medical evidence under or on which the jury acquitted was clear, that he was laboring under a delusion, which carried him away beyond the power of his own control. That he was not capable of exercising any control, over his acts which had any connection with his delusion."

The charge there was, "whether the prisoner had or had not, the use of his understanding, so as to know that he was doing a wrong and wicked act, whether the prisoner was sensible at the time he committed the act, that he violated both the law of God and man."

There is but little doubt that the jury believed in McNaghten's case that he was so far, insane as to be entirely dominated by his delusion, and that he was not therefore criminally responsible.

The test proposed by BARON BRAMWELL is, "*That the law should punish all whom it threatens on conviction. That it ought to punish all who would be influenced by the threat, all whom it would or might deter, or help to deter: that the question should be, not whether the person accused of crime is mad, but whether he understood the law's threat.*"

This sounds specious, but is not the law of England now, nor was it ever. The law threatened McNaghten, yet he was acquitted, because his delusion dominated his will, in the opinion of the jury. "He could not help it." The law did not, and could not deter him.

The law threatened HADFIELD. He knew well the nature and character of the act. He well knew it was high treason. He knew this was a crime punishable under the English law with death, and his object was that he might be put to death, to save the world.

By BARON BRAMWELL's test, Hadfield should have been convicted, and he so asserts in his paper.

But his delusion evidently dominated his will power.

He could have committed suicide, and attained his end, but desired rather that his life should be taken by others, through the channel of punishment for crime.

LORD KENYON stopped the prosecution, before ERSKINE had called half his witnesses for the defence. Why? The law did threaten Hadfield. Baron Bramwell considers that the law, instead of acting as a deterrent, actually was an inducement. It assisted him in his delusion, and furnished him with the means of the accomplishment of his insane purpose.

I assume, as a lawyer, that Baron Bramwell would consider, that the act of LORD KENYON, the trial judge, in stopping the prosecution and dismissing the case, was a judicial decision of an English court of competent jurisdiction, which judicially established as the law of that case, that HADFIELD's act was *not* a violation of English law.

That decision of Lord Kenyon has not been reversed, overruled or set aside, by any English court of competent jurisdiction, and it is English law to-day, higher than the opinion of any judge off the bench, upon an abstract question, in a polemical controversy, even if it were the Lord Chief Justice. Baron Bramwell may differ in opinion with Lord Kenyon. He may think the latter's decision was erroneous, but how can he claim that the decision is not an authority as English law till overruled or set aside.

Baron Bramwell's proposed test is both novel and *new*. It is not a safe test in many respects :

1. He would exempt all who do not understand the law's threat.

Ignorance of the law has ever been held to be no defence for crime.

One who really did not know of the law he was violating, should he be excused ?

2. All who would be in any degree influenced by the law's threat, or whom it would or might deter.

a. Do not threats of personal harm oftentimes deter the insane, from acts not necessarily wrong, but which influence their conduct ?

b. Are not the insane influenced by threats of punishment, by mechanical restraints, solitary confinement, placing in undesirable wards, etc. ?

c. Baron Bramwell claims that because the insane in

asylums, can be influenced by threats in the control of their conduct, or by what may be called asylum discipline, that they are under the law's threat, and therefore responsible.

I concede that they are constantly so influenced, but where does this lead to? Not necessarily to responsibility.

Would BARON BRAMWELL say, that under the law of England, an incurable lunatic, an inmate of an asylum, should be hung, for the homicide of a keeper, physician, or even another inmate? Has such a thing happened? Can it occur? Yet the law threatens him. He knows right from wrong, and knows he is doing wrong, and he is influenced by, and is under the threat of the law, if Baron Bramwell is correct.

It is a question of degree, this power of the will. A homicidal or suicidal lunatic, threatened with a straight jacket by his keeper, or with hyosciamus by a physician, might be able to abstain from a given line of forbidden conduct, in an asylum, and yet be wholly unable to resist killing another in the one case, or himself in the other, if the watch upon him was intermitted an instant.

d. The ability to comprehend the law's threat, must be considered in connection with, and in relation to the will power of the lunatic, to resist or overcome the impulse or delusion.

Does the delusion dominate the will? Could he help it? should be the question.

Baron Bramwell, in the *Dove* case, whom he describes as "undoubtedly of questionable sanity;" and in another as "such a madman as Dove," is reported to have himself suggested as a test, "*Could he help it?*" a much better and safer one, than that propounded in his paper, and nearer the true meaning of the English law.

What are legal punishment for offences? How insti-

tuted, how justified? Human society has always justifiably exercised the right, of regulating human conduct, by laws enacted under regular forms for punishing offenders. The theory is that majorities must rule.

The protection of the rights of man, involves and necessitates punishment for human wrongs.

No one doubts the right of society, to take a human life as penalty for murder.

Society has the same right to execute an insane man, as a sane. I speak in the sense of power or authority.

The North American savage, killed the insane on the theory, that he was of no further use to himself or the tribe.

It is said that the Chinese kill the hopelessly insane. A homicidal lunatic at large is a popular danger. Society would be justified in passing laws, to execute every insane person or to place under restraint every insane member, if the requisite majority of the law-making power, united in believing that the general welfare of the State, would be thus benefited. It is common to say this doctrine is *barbarous*. It is, perhaps, barbarous for the law to hang a man, sometimes, bloody, hideous, ghastly. *It is still the law.*

I quite agree with the Baron, in what he says about the object of punishment, "The law does not punish for revenge, but for prevention." "Punishment is not threatened out of revenge or spite." Society could never justify itself, in taking a human life, in any retaliatory spirit, or in the slightest sense of vindictive reparation, or expiation for crime. No writer has in our day, claimed that.

How far the insane person had the *actual power* to resist, was conscious of the nature of the act, threatened by the law, and to some extent even influenced by it,

would be a safer legal test than the one proposed by the Baron, who considers that under the latter, most cases of offenses by the acknowledged insane, would be followed by conviction and punishment. There is not, but if there was, there should be nothing in the law of England, that would force us to such an attitude, towards that unfortunate class, whom the EARL OF SHAFTESBURY so well described, as the most unfortunate because the most friendless of the human race.

All men who reflect, or examine the insane know, that a very large per cent. of the inmates of Insane Hospitals, including all who have any glimmer of reason often know right from wrong, the nature and degree of punishment for crimes, and yet no one would, in the nature of things, recognize such a test, in case of homicides occurring among the inmates of asylums, nor do the judges pretend to do so, in either country, in that class of cases, where the offences were committed in the institutions for the insane.

The practical enforcement, of such a test of responsibility for the insane, as that stated in the answers of the English judges, was followed by the conviction in the American states, of many confessedly insane persons, their frequent execution, creating public excitement and distrust, of our criminal procedure, in the popular mind.

The whole path of judicial decisions during, the last part of the present century, is illustrated by rows of scaffolds,—a reproach upon our civilization,—on which have perished the insane, convicted by juries, under the direction of judges, who made knowledge of right and wrong, the test of criminal responsibility !

The judiciary in some of the American states, realizing the evil, commenced to grapple, with the issue.

In New Hampshire Judge Doe wrote a masterly opinion of the Court, in State vs. Pike, repudiating the rule of the McNaghten Case (49 N. H., p. 399), (50 N. H., 369). And similar decisions followed in Kentucky (Kriel vs Com., 5, Bush (Ky.), 362), Smith vs. Com., 1 Duv. (Ky.), 224) ; in Virginia (Dejarnette vs. Com., 75 Va., 876 ; in Mississippi (Cunningham vs. State, 56 Miss., 269) ; in Connecticut (State vs. Johnson, 40 Conn., 136), Anderson vs. State, 43 Conn. 514) ; in Iowa (State vs. McWhorter, 46 Iowa, 88), State vs. Feltes, 35 Iowa, 68) ; in Illinois (Hopp vs. People, 31 Ill., 385) ; in Indiana (Bradley vs. State, 31 Ind., 492) ; in Texas (Harris vs. State, 18 Tex. Court of Appeals, 87) ; in Pennsylvania (Coyle vs. Com., 100 Pa., p. 573) ; in Georgia (Roberts vs. State, 3 Ga., 310) ; in Massachusetts (Com. vs. Rogers, 7 Metc., 500.)

In England the conviction of men confessedly insane, under the charge of judges, insisting upon the right and wrong tests, and notably the later cases of Goldstone and Cole, led to such excitement in the public mind, that the execution of the insane, thus convicted was finally averted by a medical inquiry, after sentence, under the authority of the Home Secretary, and the unfortunates were placed in Broadmoor Asylum for what are called insane criminals, during her majestys pleasure.

In America they were usually executed, as in cases of Guiteau, Dr. Beach, Taylor and others in Pennsylvania, the executives sometimes, not being willing, to institute the necessary medical inquiry after conviction, though the law provided for it, in nearly all cases. In New York, however, Governor Hill has always instituted the medical inquiry after conviction, if any doubt or question existed, though in Pennsylvania Governor Pattison refused such an application, in case of Beach though strongly urged, and high medical

authority pronounced him insane, and probably wholly unconscious when committing the act. The President of the United States, did not authorize such an inquiry in case of GUITEAU, which is a source of regret. The post-mortem demonstrated his insanity, which post-mortems frequently do not establish where insanity really exists. The writer heard Guiteau's address to the jury on the trial, in which he laughed, shed tears, sang poetry, acting like an insane person, strongly indicating that he had lost will power, and was dominated by his delusion.

A high medical authority states, that in England, these judicial scandals, are now substantially averted, by an instruction given from the Home Office to Government counsel, in the criminal courts, to institute an inquiry in every case, where there is any reason to suspect insanity exists, or will be pleaded; to be conducted by the judges before the trial, by the examination of leading and acknowledged competent medical experts, and that in consequence, we are not likely to see insane persons executed, except very rarely, in that country, under the present law ; but in our own country, in more than half the states, the right and wrong test is still in force, and the insane are constantly convicted, and often executed.

Two notable events have occurred recently, bearing directly upon these questions, so important in their influence and consequences, that I have felt it a matter of duty, to call the attention of the Medico-Legal Society to them, and through the press to the notice of the scientific world, as reflecting the progress or evolution of American judicial thought, upon this subject.

The first was the case of PARSONS, tried in the State of Alabama, for murder, and the latter the case of DALY, tried recently in the District of Columbia, for the same offense.

I submit the opinion of the Supreme Court of last resort in Alabama, as furnished me by Judge H. M. Somerville, a member of the Medio-Legal Society, regarding it as I do, as the most able and scholarly recent review of the question, without remark, except to say ; that the decision of this case repudiates the rule in *McNaghten* case in Alabama, where hitherto it had obtained, and adds that state to the list of American States where it no longer is followed.

Judge Somerville for many years has been a member of the Board of Managers of the Alabama State Hospital for the Insane at Tuscaloosa, and has a personal and practical knowledge of the insane, which eminently fits him for the careful examination of this subject, which the opinion adopted by the court exemplifies.

PARSONS v. STATE; SUPREME COURT OF ALABAMA.—OPINION OF SOMERVILLE, J.

Indictment for Murder.

1. *Insanity as a defense; proper rule of legal responsibility.*—The capacity to distinguish between right and wrong, either abstractly or as applied to the particular act, as a legal *test* of responsibility for crime, is repudiated by the more advanced authorities, legal and medical, who lay down the following rules which the court now adopts: (1), where there is 'no such capacity to distinguish between right and wrong, as applied to the particular act, there is no legal responsibility; (2), where there is such capacity, a defendant is nevertheless not legally responsible, if, by reason of the *duress* of mental disease, he has so far lost the *power to choose* between right and wrong, as not to avoid doing the act in question, so that his free agency was at the time destroyed; and, at the same time, the alleged crime was so connected with such mental disease, in relation of cause and effect, as to have been the product or offspring of it *solely*.

2. *Delusional insanity; the same rule.*—The same rule applies to delusional insanity, and necessarily conflicts with the old rule laid down by the English Judges, in *McNaghten's Case*, that, in case of delusion, the defendant "must be considered in the same situation as to responsibility, as if the facts with respect to which the delusion exists were real." (The 4th head-note in *Boswell's Case*, 63 Ala. 308, on this point pronounced *obiter dictum*.)

3. *Insanity as a disease; question for jury.*—The existence or non-existence of the disease of insanity, such as may fall within the above rule, is a



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question of fact to be determined in each particular case by the jury, enlightened if necessary, by the testimony of experts.

4. *Same; burden of proof; reasonable doubt.*—When insanity is set up as a defense in a criminal case, it must be established to the satisfaction of the jury by a preponderance of the evidence and a reasonable doubt of the defendant's sanity, raised by all the evidence, does not justify an acquittal.

5. *Special venire; and service of copy on defendant.*—Under the provisions of the act approved February 17, 1885, regulating the drawing and summoning of jurors (Acts Ala. 1884-85, pp. 181-87), the special *venire* for a capital case consists of the regular jurors for the week, and the additional jurors (not being less than twelve nor more than twenty-four) drawn by the presiding judge in open court; and a copy of the names of these jurors being served on the defendant, it is no objection that some of them were not then summoned, or were not summoned at all.

6. *Non-experts as witnesses in insanity cases.*—The rule on this subject, stated *Ford's Case*, 71 Ala. 385, adhered to, that while non-experts may give their opinions, on the question of the defendant's alleged insanity, such opinions must first be prefaced by a statement of the facts upon which it is based.

Appeal from City Court of Birmingham.

Tried before the Hon. H. A. SHARPE.

The indictment in this case charged that the defendants, Nancy J. Parsons and Joe Parsons, unlawfully and with malice aforethought, killed Bennett Parsons by shooting him with a gun.

On said trial the evidence, on behalf of the State, tended to show, that the defendants, Joe Parsons and Nancy J. Parsons, murdered Bennett Parsons on January 31, 1885, by shooting him with a gun.

The evidence on behalf of defendants tended to show, that defendant, Joe Parsons, was, at the time of said killing, and had always been an idiot; and that defendant, Nancy Parsons, was, at the time of said killing, insane; that the act of Nancy, assisting in the killing of deceased, was the result of an insane delusion, that deceased possessed supernatural power to afflict her with disease, and power, by means of a supernatural trick, to take her life; that deceased by means of such supernatural power, had caused said Nancy to be sick and in bad health for a long time, and that her act at the time of said killing, in assisting therein, was under the insane delusion that she was in great danger of the loss of her life from deceased, to be effected by a supernatural trick. The defendant, Nancy, was the wife of deceased, and defendant, Joe, was his daughter. The evidence also tended to show insanity for two generations, in the families of said defendants.

The defendant, Joe, offered to prove by Mrs. James Nail, that "she had known Joe Parsons from her infancy, that she has been idiotic all her life, and she is idiotic now, and that she has seen her frequently during her acquaintance with her, and has often conversed with her." The State objected to the introduction of said evidence, which objection the court sustained, and defendants excepted.

The Court, *ex mero motu*, charged the jury that, "When insanity is relied on as a defense to crime, and such insanity consists of a delusion merely,

18 RECENT JUDICIAL DEPARTURE IN INSANITY CASES.

and the defendant is not shown to be otherwise insane, then such delusion is no justification or excuse of homicide, unless the perpetrator was insanely deluded into the belief of the existence of a fact or state of facts which, if true, would justify or excuse the homicide under the law applicable to sane persons." The defendants duly excepted to the giving of this charge.

The court gave the following, among other charges, at the request of the State, to which defendants duly excepted:

"2. It is only insanity of a chronic or permanent nature, which, on being proved, is presumed to continue; there is no presumption that fitful and exceptional attacks of insanity are continuous."

"5. If the jury believe from all the testimony that the defendants at the time of the killing, were in such a state of mind as to know, that the act they were committing was unlawful and morally wrong, they are responsible as a sane person, if the jury believe they committed the act with which they are charged."

The defendants asked the following charges, in writing, which the court refused to give, and to which rulings of the court exceptions were duly reserved.

"6. In order to constitute a crime the accused must have memory and intelligence sufficient to know, that the act she is about to commit is wrong, to remember and understand that if she commits the act she will be punished, and besides this, reason and will to enable her to comprehend and choose between the supposed advantage at the gratification to be obtained by the criminal act, and the immunity from punishment which she will secure by abstaining from it."

"8. If the jury believe from the evidence that the prisoners or either of them, was moved to action by an insane impulse controlling their will or their judgment, then they are, or the one so affected, is, not guilty of the crime charged."

"12. If the jury believe from the evidence, that the prisoners committed the act in a manner which would be criminal and unlawful, if they were sane, the verdict should be "not guilty," if the killing was an offspring or product of mental disease in the prisoner.

The jury, on their retirement, found the defendants guilty of murder in the second degree, and this appeal is prosecuted from the judgment rendered on such finding.

Smith & Lowe and Wm. Bethea, for appellants.

T. N. McClellan, Attorney-General, *contra*.

SOMERVILLE, J.—In this case the defendants have been convicted of the murder of Bennett Parsons, by shooting him with a gun, one of the defendants being the wife, and the other the daughter of the deceased. The defense set up in the trial was the plea of insanity, the evidence tending to show, that the daughter was an idiot, and the mother and wife a lunatic, subject to insane delusions, and that the killing on her part was the offspring and product of those delusions.

The rulings of the court raise some questions of no less difficulty than of interest, for, as observed by a distinguished American judge, "of all medi-co-legal questions, those connected with insanity are the most difficult and

perplexing."—Per DILLON, C. J., in *State v. Felter*, 35 Iowa, 67. It has become of late a matter of comment among intelligent men, including the most advanced thinkers in the medical and legal professions, that the deliverances of the law courts, on this branch of our jurisprudence have not heretofore been at all satisfactory, either in the soundness of their theories, or in their practical application. The earliest English decisions, striving to establish rules and tests on the subject, including alike the legal rules of criminal and civil responsibility, and the supposed tests of the existence of the disease of insanity itself, are now admitted to have been deplorably erroneous, and to say nothing of their vacillating character, have long since been abandoned. The views of the ablest of the old text writers and sages of the law were equally confused and uncertain in the treatment of these subjects, and they are now entirely exploded. Time was in the history of our laws, that the veriest lunatic was debarred from pleading his providential affliction as a defence to his contracts. It was said, in justification of so absurd a rule, that no one could be permitted to stultify himself by pleading his own disability. So great a jurist as Lord Coke, in his attempted classification of madmen, laid down the legal rule of criminal responsibility to be, that one should "*wholly* have lost his memory and understanding;" as to which Mr. Erskine, when defending Hadfield for shooting the King, in the year 1800, justly observed: "No such madman ever existed in the world." After this great and historical case, the existence of delusion promised for a while to become the sole test of insanity, and acting under duress of such delusion was recognized in effect, as the legal rule of responsibility. Lord Kenyon, after ordering a verdict of acquittal in that case, declared with emphasis, that there was "no doubt on earth" the law was correctly stated in the argument of the counsel. But, as it was soon discovered that insanity often existed without delusions, as well as delusions without insanity, this view was also abandoned. Lord Hale had before declared that the rule of responsibility, was measured by the mental capacity possessed by a child fourteen years of age, and Mr. Justice Tracy, and other judges, had ventured to decide that, to be non-punishable for alleged acts of crime, "a man must be totally deprived of his understanding and memory, so as not to know what he was doing—no more than an infant, a brute, or a *wild beast*."—*Arnold's Case*, 16 How. St. Tr. 764. All these rules have necessarily been discarded in modern times in the light of the new scientific knowledge acquired by a more thorough study of the disease of insanity. In *Bellingham's Case*, decided in 1812, by Lord Mansfield at the Old Bailey, (Coll. on Lun. 630), the test was held to consist in a knowledge that murder, the crime there committed, was "against the laws of God and nature," thus meaning an ability to distinguish between right and wrong in the abstract. This rule was not adhered to, but seems to have been modified so as to make the test rather a knowledge of right and wrong as applied to the particular act.—Lawson on Insanity, 231, § 7 *et seq.* The great leading case on this subject in England, is *McNaghten's case*, decided 1843 before the English House of Lords, 10 Cl. & F. 200; s. c., 2 Lawson's Cr. Def. 150. It was decided by the Judges in that case, that, in order to entitle the accused to acquittal, it must be clearly proved that, at the time of committing the offense, he was laboring under such a defect of reason,

from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did, not to know that what he was doing was wrong. This rule is commonly supposed to have heretofore been adopted by this court, and has been followed by the general current of American adjudications.—*Boswell v. The State*, 63 Ala. 307; s. c., 35 Amer. Rep. 20; s. c., 2 *Lawson's Cr. Def.* 352; *McAllister v. State*, 17 Ala. 434; *Lawson on Insanity*, 219-221, 231.

In view of these conflicting decisions, and of the new light thrown on the disease of insanity, by the discoveries of modern psychological medicine, the courts of the country may well hesitate, before blindly following in the unsteady footsteps found upon the old sandstones of our common law jurisprudence a century ago. The trial court, with prudent propriety, followed the previous decisions of this court, the correctness of which, as to this subject, we are now requested to review. We do not hesitate to say that we reopen the discussion of this subject with no little reluctance, having long hesitated to disturb our past decisions on this branch of the law. Nothing could induce us to do so, except an imperious sense of duty, which has been excited by a protracted investigation and study, impressing our minds with the conviction, that the law of insanity as declared by the courts on many points, and especially the rule of criminal accountability, and the assumed tests of disease, to that extent which confers legal irresponsibility, have not kept pace with the progress of thought and discovery, in the present advanced stages of medical science. Though science has led the way, the courts of England have declined to follow, as shown by their adherence to the rulings in *McNaghten's case*, emphasized by the strange declaration made by the Lord Chancellor of England, in the House of Lords, on so late a day as March 11, 1862, "that the introduction of medical opinions and medical theories into this subject, has proceeded upon the vicious principle of considering insanity as a disease!"

It is not surprising that this state of affairs has elicited from a learned law writer, who treats of this subject, the humiliating declaration, that, under the influence of these ancient theories, "the memorials of our jurisprudence are written all over with cases, in which those who are now understood to have been insane, have been executed as criminals."—1 *Bish. Cr. Law* (7th Ed.), § 390. There is good reason, both for this fact, and for the existence of unsatisfactory rules on this subject. In what we say we do not intend to give countenance to acquittals of criminals, frequent examples of which have been witnessed in modern times, based on the doctrine of moral or emotional insanity, unconnected with mental disease, which is not yet sufficiently supported by psychology, or recognized by law as an excuse for crime.—*Boswell's case, supra*; 1 *Whar. Cr. Law*, (9th Ed.), § 43.

In ancient times, lunatics were not regarded as "unfortunate sufferers from disease, but rather as subjects of demoniacal possession, or as self-made victims of evil passions." They were not cared for humanely in asylums and hospitals, but were incarcerated in jails, punished with chains and stripes, and often sentenced to death by burning or the gibbet. When put on their trial, the issue before the court then was not as now. If acquitted, they could only be turned loose on the community, to repeat their crimes without molestation or restraint. They could not be committed to

hospitals, as at the present day, to be kept in custody, cared for by medical attention, and often cured. It was not until the beginning of the present century, that the progress of Christian civilization asserted itself by the exposure of the then existing barbarities, and that the outcry of philanthropists, succeeded in eliciting an investigation of the British Parliament looking to their suppression. Up to that period the medical treatment of the insane is known to have been conducted upon a basis of ignorance, inhumanity, and empiricism.—Amer. Cyclop., Vol. 9 (1874), *title INSANITY*. Being punished for wickedness, rather than treated for disease, this is not surprising. The exposure of these evils not only led to the establishment of that most beneficent of modern civilized charities—the Hospital and Asylum for the Insane—but also furnished hitherto unequalled opportunities to the medical profession, of investigating and treating insanity on the pathological basis, of its being a disease of the brain. Under these new and more favorable conditions the medical jurisprudence of insanity has assumed an entirely new phase. The nature and exciting causes of the disease, have been thoroughly studied and more fully comprehended. The result is that the “right and wrong test,” as it is sometimes called, which, it must be remembered, itself originated with the medical profession, in the mere dawn of the scientific knowledge of insanity, has been condemned by the great current of modern medical authorities, who believe it to be “founded on an ignorant and imperfect view of the disease.” Encyc. Brit. Vol. 15 (9th Ed.), *title INSANITY*.

The question then presented seems to be, whether an old rule of legal responsibility shall be adhered to, based on theories of physicians promulgated a hundred years ago, which refuse to recognize any evidence of insanity, except the single test of mental capacity to distinguish right and wrong—or whether the courts will recognize as a possible fact, if capable of proof by clear and satisfactory testimony, the doctrine, now alleged by those of the medical profession who have made insanity a special subject of investigation, that the old test is wrong, and that there is no single test by which the existence of the disease, to that degree which exempts from punishment, can in every case be infallibly detected. The inquiry must not be unduly obstructed by the doctrine of *stare decisis*, for the life of the common law system and the hope of its permanency, consist largely in its power of adaptation to new scientific discoveries, and the requirements of an ever advancing civilization. There is inherent in it the vital principle of judicial evolution, which preserves itself by a constant struggle for approximation to the highest practical wisdom. It is not like the laws of Medes and Persians, which could not be changed. In establishing any new rule, we should strive, however, to have proper regard for two opposite aspects of the subject, lest, in the words of Lord Hale, “on one side, there be a kind of inhumanity towards the defects of human nature; or, on the other, too great indulgence to great crimes.”

It is everywhere admitted, and as to this there can be no doubt, that an idiot, lunatic, or other person of diseased brain, who is afflicted to such extent as not to know whether he is doing right or wrong, is not punishable for any act which he may do while in that state.

Can the courts justly say, however, that the only test or rule of responsi-

bility in criminal cases is the power to distinguish right from wrong, whether in the abstract, or as applied to the particular case? Or may there not be insane persons, of a diseased brain, who, while capable of perceiving the difference between right and wrong, are, as matter of fact, so far under the *duress of such disease* as to destroy the power to choose between right and wrong? Will the courts assume as a fact, not to be rebutted by any amount of evidence, or any new discoveries of medical science, that there is, and can be no such state of the mind, as that described by a writer on psychological medicine, as one "in which the reason has lost its empire over the passions, and the actions by which they are manifested, to such a degree, that the individual can neither repress the former, nor abstain from the latter?"—Dean's Med. Jur. 497.

Much confusion can be avoided in the discussion of this subject, by separating the duty of the jury from that of the court, in the trial of a case of this character. The province of the jury is to determine facts, that of the court to state the law. The rule in *McNaughten's case* arrogates to the courts in legal effect, the right to assert, as matter of law, the following propositions:

- (1). That there is but a single test of the existence of that degree of insanity, such as confers irresponsibility for crime.
- (2). That there does not exist any case of such insanity, in which that single test—the capacity to distinguish right from wrong—does not appear.
- (3). That all other evidences of alleged insanity, supposed by physicians and experts, to indicate a destruction of the freedom of the human will, and the irresistible duress of one's actions, do not destroy his mental capacity to entertain a criminal intent.

The whole difficulty, as justly said by the Supreme Judicial Court of New Hampshire, is, that "courts have undertaken to declare that to be law which is *matter of fact*." "If," observes the same court, "the tests of insanity are matters of law, the practice of allowing experts to testify what they are should be discontinued; if they are matters of fact, the judge should no longer testify without being sworn as a witness, and showing himself to be qualified to testify as an expert.—*State v. Pike*, 49 N. H. 399.

We first consider what is *the proper legal rule of responsibility in criminal cases*.

No one can deny that there must be two constituent elements of legal responsibility in the commission of every crime, and no rule can be just and reasonable which fails to recognize either of them: (1). Capacity of intellectual discrimination; and (2). Freedom of will. Mr. Wharton, after recognizing this fundamental and obvious principle, observes: "If there be either incapacity to distinguish between right and wrong as to the particular act, or delusion as to the act, or inability to refrain from doing the act, there is no responsibility."—1 Whar. Cr. Law. (9th ed.), § 33. Says Mr. Bishop, in discussing this subject: "There cannot be, and there is not, in any locality or age, a law punishing men for what they cannot avoid."—1 Bish. Cr. Law. (7th ed.), § 383b.

If, therefore it be true, as a matter of fact, that the disease of insanity can, in its action on the human brain, through a shattered nervous organization or in any other mode, so affect the mind as to subvert the freedom

of the will, and thereby destroy the power of the victim, *to choose* between the right and wrong, although he perceive it—by which we mean the power of volition to adhere in action to the right, and abstain from the wrong—is such a one criminally responsible, for an act done under the influence of such controlling disease? We clearly think not, and such, we believe to be the just, reasonable and humane rule, towards which all the modern authorities in this country, legislation in England, and the laws of other civilized countries of the world, are gradually, but surely tending, as we shall further on attempt more fully to show.

We next consider the question as to the *probable existence of such a disease*, and the *test of its presence* in a given case.

It will not do for the courts to dogmatically deny, the possible existence of such a *disease*, or its pathological and psychical effects, because this is a matter of evidence, not of law, or judicial cognizance. Its existence, and effect on the mind and conduct of the patient, is a question of fact to be proved, just as much as the possible existence of cholera or yellow fever formerly was, before these diseases became the subjects of common knowledge, or the effects of delirium from fever, or intoxication from opium and alcoholic stimulants would be. The courts could, with just as much propriety, years ago, have denied the existence of the Copernican system of the universe, the efficacy of steam and electricity as a motive power, or the possibility of communication in a few moments between the continents of Europe and America by the magnetic telegraph, or that of the instantaneous transmission of the human voice, from one distant city to another by the use of the telephone. These are scientific facts, first discovered by experts, before becoming matters of common knowledge. So, in like manner, must be every other unknown scientific fact, in whatever profession or department of knowledge. The existence of such a cerebral disease, as that which we have described, is earnestly alleged by the superintendents of insane hospitals, and other experts, who constantly have experimental dealings with the insane, and they are permitted every day to so testify before juries. The truth of their testimony, or what is the same thing, the existence or non-existence of such a disease of the mind—by which we of course mean, disease of the *brain* affecting the mind—in each particular case, is necessarily a matter for the determination of the jury from the evidence.

So it is equally obvious that the courts can not, upon any sound principle, undertake to say, what are the invariable or infallible tests of such disease. The attempt has been repeatedly made, and has proved a confessed failure in practice. "Such a test," says Mr. Bishop, "has never been found, not because those who have searched for it have not been able and diligent, but because it does not exist."—1 Bish. Cr. Law. (7th ed.), § 381. In this conclusion, Dr. Ray, in his learned work on the Medical Jurisprudence of Insanity, fully concurs. Ray's Med. Jur. Ins., p. 39. The symptoms and causes of insanity are so variable, and its pathology so complex, that no two cases may be just alike. "The fact of its existence," says Dr. Ray, "is never established by any single diagnostic symptom, but by the whole body of symptoms, no particular one of which is present in every case."—Ray's Med. Jur. of Ins., § 24. Its exciting causes being moral, psychical, and

Physical, are the especial subject of specialists' study. What effect may be exerted on the given patient by age, sex, occupation, the seasons, personal surroundings, hereditary transmission, and other causes, is the subject of evidence based on investigation, diagnosis, observation, and experiment. Peculiar opportunities, never before enjoyed in the history of our race, are offered in the present age for the ascertainment of these facts, by the establishment of asylums for the custody and treatment of the insane, which Christian benevolence and statesmanship have substituted for jails and gibbets. The testimony of these experts—differ as they may in many doubtful cases—would seem to be, the best which can be obtained, however unsatisfactory it may be in some respects.

In the present state of our law, under the rule in *McNaughten's case*, we are confronted with this practical difficulty, which itself demonstrates the defect of the rule. The courts in effect charge the juries, as matter of law, that no mental disease exists, as that often testified to by medical writers, superintendents of insane hospitals, and other experts—that there can be as a matter of scientific fact no cerebral defect, congenital or acquired, which destroys the patient's power of self-control—his liberty of will and action—provided only he retains a mental consciousness of right and wrong. The experts are immediately put under oath, and tell the juries just the contrary as matter of evidence; asserting that no one of ordinary intelligence can spend an hour in the wards of an insane asylum, without discovering such cases, and in fact that “the whole management of such asylums presupposes a knowledge of right and wrong on the part of their inmates.”—Guy & F. on Forensic Med. 220. The result in practice, we repeat, is that the courts charge one way, and the jury, following an alleged higher law of humanity find another, in harmony with the evidence.

In Bucknill or Criminal Lunacy, p. 59, it is asserted as “the result of observation and experience, that in all lunatics, and the most degraded idiots, whenever manifestation of any mental action can be elicited, the feeling of right and wrong may be proved to exist.”

“With regard to this test,” says Dr. Russell Reynolds, in his work on “The Scientific Value of the Legal Tests of Insanity,” p. 34 (London, 1872), “I may say, and most emphatically, that it is utterly untrustworthy, because untrue to the obvious facts of Nature.”

In the learned treatise of Drs. Bucknill and Tuke on “Psychological Medicine,” p. 269 (4th ed. London, 1879), the legal tests of responsibility are discussed, and the adherence of the courts to the right and wrong test is deplored as unfortunate, the true principle being stated to be “whether, in consequence of congenital defect or acquired disease, the power of self-control is absent altogether, or is so far wanting as to render the individual irresponsible.” It is observed by the authors: “As has again and again been shown, the unconsciousness of right and wrong is one thing, and the powerlessness through cerebral defect or disease to do right is another. To confound them in an asylum would have the effect of transferring a considerable number of the inmates thence to the treadmill or the gallows.”

Dr. Peter Bryce, Superintendent of the Alabama Insane Hospital for more than a quarter of a century past, alluding to the moral and disciplinari-

treatment to which the insane inmates are subjected, observes: "They are dealt with in this institution, as far as it is practicable to do so, as rational beings; and it seldom happens that we meet with an insane person who cannot be made to discern, to some feeble extent, his duties to himself and others, and his true relations to society." Sixteenth Annual Rep. Ala. Insane Hosp. (1876), p. 22; Biennial Rep. (1886), pp. 12-18.

Other distinguished writers on the medical jurisprudence of insanity have expressed like views, with comparative unanimity. And nowhere do we find the rule more emphatically condemned, than by those who have the practical care and treatment of the insane, in the various lunatic asylums of every civilized country. A notable instance is found in the following resolution unanimously passed at the annual meeting of the British Association of medical-officers of Asylums and Hospitals for the Insane, held in London, July 14, 1864, where there were present fifty-four medical officers:

Resolved. That so much of the legal test of the mental condition of an alleged criminal lunatic, as renders him a responsible agent, because he knows the difference between right and wrong, is inconsistent with the fact, well known to every member of this meeting, that the power of distinguishing between right and wrong, exists very frequently in those who are undoubtedly insane, and is often associated with dangerous and uncontrollable delusions." Judicial Aspects of Ins. (Ordrionaux, 1877), 423-424.

These testimonials as to a scientific fact, are recognized by intelligent men in the affairs of every day business, and are constantly acted on by juries. They cannot be silently ignored by judges. Whether established or not, there is certainly respectable evidence tending to establish it, and this is all the courts can require.

Nor are the modern law writers silent, in their disapproval of the alleged test under discussion. It meets with the criticism or condemnation of the most respectable and advanced in thought among them, the tendency being to incorporate in the legal rule of responsibility "not only the knowledge of good and evil, but the power to choose the one, and refrain from the other." Browne's Med. Jur. of Insanity, §§ 13 et seq., § 18; Ray's Med. Jur., §§ 16-19; Whart. & Stiles' Med. Jur. § 59; 1 Whart. Cr. Law (9th ed.), §§ 33, 43, 45; 1 Bish. Cr. Law (7th ed.), § 386 et seq.; Judicial Aspects of Insanity (Ordrionaux), 419; 1 Greenl. Ev. § 372; 1 Steph. Hist. Cr. Law, § 168; Amer. Law. Rev. Vol. 4 (1869-70), 236 et seq.

The following practicable suggestion is made in the able treatise of Balfour Browne above alluded to: "In case of alleged insanity, then," he says, "if the individual suffering from enfeeblement of intellect, delusion, or any other form of mental aberration, was looked upon as, to the extent of this delusion, under the influence of duress (the dire duress of disease), and in so far *incapacitated to choose* the good and eschew the evil, in so far, it seems to us," he continues, "would the requirements of law be fulfilled; and in that way it would afford an opening, by the evidence of experts, for the proof of the amount of self-duress in each individual case, and *thus alone can the criterion of law and the criterion of the inductive science of medical psychology be made to coincide.*" Med. Jar. of Ins. (Browne), § 18.

This, in our judgment, is the practical solution of the difficulty before us, as it preserves to the courts and juries, respectively, a harmonious field for the full assertion of their time honored functions.

So great, it may be added, are the embarrassments growing out of the old rule, as expounded by the judges in the House of English Lords, that, in March, 1874, a bill was brought before the House of Commons, supposed to have been drafted by the learned counsel for the Queen, Mr. Fitzjames Stephen, which introduced into the old rule, the new element of an absence of the power of self-control, produced by diseases affecting the mind, and this proposed alteration of the law was cordially recommended by the late Chief Justice Cockburn, his only objection being that the principle was proposed to be limited to the case of homicide.—1 Whart. Cr. Law (9th ed.), § 45, p. 63, *note 1*; Browne's Med. Jur. of Ins., § 10, *note 1*.

There are many well considered cases which support these views.

In the famous case of *Hadfield*, 27 How. St. Tr. 1282, s. c. 2 Lawson's Cr. Def. 201-215, who was indicted and tried for shooting the King, and who was defended by Mr. Erskine in an argument most able and eloquent, it clearly appeared that the accused understood the difference between right and wrong as applied to the particular act. Yet he labored under the delusion, that he had constant intercourse with the Divine Creator; that the world was coming to an end, and that, like Christ, he must be sacrificed for its salvation. He was so much under the duress of the delusion that he "must be destroyed, but ought not to destroy himself," that he committed the act for the specific purpose of being arrested and executed. He was acquitted on being tried before Lord Kenyon, and, no one ever doubted, justly so.

The case of *United States v. Lawrence*, 4 Cr. C. C. Rep. 518, tried in 1835, presented another instance of delusion, the prisoner supposing himself to be the King of England and of the United States, as an appendage of England, and that General Jackson, then President, stood in his way in the enjoyment of the right. Acting under the duress of this delusion, the accused assaulted the President by attempting to shoot him with a pistol. He was, in five minutes, acquitted by the jury on the ground of insanity.

The case of the *United States v. Guiteau*, 10 Fed. Rep. 161, s. c., 2 Lawson's Cr. Def., 162, is still fresh in cotemporary recollection, and a mention of it can scarcely be omitted in the discussion of the subject of insanity. The accused was tried, sentenced and executed for the assassination of James A. Garfield, then President of the United States, which occurred in July, 1881. The accused himself testified that he was impelled to commit the act of killing by inspiration from the Almighty, in order, as he declared, "to unite the two factions of the Republican party, and thereby save the government from going into the hands of the ex-rebels and their Northern allies." There was evidence of various symptoms of mental unsoundness, and some evidence tending to prove such an alleged delusion, but there was also evidence to the contrary, strongly supported by the most distinguished experts, and looking to the conclusion, that the accused entertained no such delusion, but that, being a very eccentric and immoral man, he acted from moral obliquity, the morbid love of notoriety, and with the expressed hope that the faction of the Republican party, in whose interest he professed to act, would intervene to protect him. The case was tried before the United States District Court, for the District of Columbia, before Mr. Justice Cox, whose charge to the jury is replete with interest and learning.

While he adopted the right and wrong test of insanity, he yet recognized the principle, that, if the accused in fact entertained an insane delusion, which was the product of the disease of insanity, and not of a malicious heart and vicious nature, and acted solely under the influence of such delusion, he could not be charged with entertaining a criminal intent. An insane delusion was defined to be "an unreasoning and incorrigible belief in the existence of facts, which are either impossible absolutely, or impossible under the circumstances of the individual," and no doubt the case was largely determined, by the application of this definition by the jury. It must ever be a mere matter of speculation, what influence may have been exerted upon them by the high personal and political significance of the deceased, as the Chief Magistrate of the Government, or other peculiar surroundings of a partisan nature. The case in its facts is so peculiar, as scarcely to serve the purpose of a useful precedent in the future.

We note other adjudged cases, in this country, which support the modern rule for which we here contend, including one decided in England as far back as 1840, often referred to by the text writers. In *Rex v. Oxford*, 2 C. & P., 225, Lord Denman clearly had in mind this principle, when, after observing that one may commit a crime and not be responsible, he used this significant language: "If some controlling disease was in truth the *acting power within him*, which he could not resist, then he will not be responsible." The accused in that case acted under the duress of a delusion of an insane character.

In *State v. Felter*, 35 Iowa, 63, the capacity to distinguish between right and wrong was held not to be a safe test of criminal responsibility in all cases, and it was accordingly decided, that, if a person commit a homicide, knowing it to be wrong, but do so under the influence of an uncontrollable and irresistible impulse, arising not from natural passion, but from an insane condition of the mind, he is not criminally responsible. "If," said Chief Justice Dillon, "by the observation and concurrent testimony of medical men who make the study of insanity a specialty, it shall be definitely established to be true, that there is an unsound condition of the mind, that is, a diseased condition of the mind, in which, though a person abstractly knows that a given act is wrong, he is yet, by an *insane impulse*, that is, an impulse proceeding from a diseased intellect, irresistibly driven to commit it—the law must modify its ancient doctrines and recognize the truth, and give to this condition, when it is satisfactorily shown to exist, its exculpatory effect."

In *Hopps v. People*, 31 Ill. 385, which was an indictment for murder, the same rule was recognized in different words. It was there held, that if, at the time of the killing, the defendant was not of sound mind, but affected with insanity, and such disease was the *efficient cause* of the act, operating to create an uncontrollable impulse, so as to deprive the accused of the power of volition in the matter, and he would not have done the act but for the existence of such condition of mind, he ought to be acquitted.

In *Bradly v. State*, 31 Ind. 472, a like modification of the old rule was announced, the court observing: "Men under the influence of disease, may know the right, and yet be powerless to resist the wrong. The well known exhibition of cunning, by persons admitted to be insane, in the perpetration

of an illegal act, would seem to indicate comprehension of its evil nature and legal consequences, and yet the power of self-control being lost from disease, there can be no legal responsibility."

In *Harris v. State*, 18 Tex. Ct. App. 87, s. c. 5 Amer. Cr. Rep. (Gibbons), 357, this rule was applied to the disease known as kleptomania, which was defined as a species of insanity, producing an uncontrollable propensity to steal, and it was held, if clearly established by the evidence, to constitute a complete defense in a trial for theft.

The *State v. Pike*, 49 N. H. 399, was an indictment for murder, to which the plea of insanity was set up as a defense. It was held to be a question of fact for the jury to determine; (1), whether there was such a mental disease as dipsomania, which is an irresistible craving for alcoholic liquors, and (2), whether the act of killing was the product of such disease. One of the most instructive discussions on the law of insanity, which can be found in legal literature, is the learned opinion of Mr. Justice Doe in that case.—*Lawson on Insanity*, p. 311-312; 2 *Lawson's Cr. Def.* 311 *et seq.*

This ruling was followed by the same court in *State v. Jones*, 50 N. H. 369, s. c., 9 Amer. Rep. 242, which was an indictment charging the defendant with murdering his wife. The evidence tended to show that the defendant was insane, and killed her under the delusive belief, that she had been guilty of adultery with one French. The rule in *McNighten's case*, was entirely repudiated, both on the subject of the right and wrong test, and that of delusions, and it was held that the defendant should be acquitted, if he was at the time afflicted with a disease of the mind of such character as to take away the capacity to entertain a criminal intent, and that there could be no criminal intent imputed, if, as a matter of fact, the evidence showed that the killing was the offspring or product of such disease.

Numerous other cases could be cited bearing on this particular phase of the law, and supporting the above views with more or less clearness or statement. That some of these cases adopt the extreme view, and recognize moral insanity as a defense to crime, and others adopt a measure of proof for the establishment of insanity more liberal to the defendant than our own rule, can neither lessen their weight as authority, nor destroy the force of their logic. Many of them go further on each of these points than this court has done, and are, therefore, stronger authorities than they would otherwise be in support of our views.—*Kriel v. Com.* 5 Bush. (Ky.), 302; *Smith v. Com.*, 1 Duv. (Ky.), 224; *Dejarnette v. Com.*, 75 Va., 867; *Coyle v. Com.*, 100 Penn. St., 573; *Cunningham v. State*, 53 Miss., 269; *Conn. v. Rogers*, 7 Metc., 500; *State v. Johnson*, 40 Conn., 136; *Anderson v. State*, 43 Conn., 514, 525; *Buswell on Ins.*, § 439 *et seq.*; *State v. McWhorter*, 43 Iowa, 88.

The law of Scotland is in accord with the English law on this subject, as might well be expected. The criminal Code of Germany, however, contains the following provision, which is said to have been the formulated result of a very able discussion both by the physicians and lawyers of that country. "There is no criminal act, when the actor at the time of the offense is in a state of unconsciousness or morbid disturbance of the mind, through which the free determination of his will is excluded."—Encyc. Brit. (9th ed.), Vol. 9, p. 112; citing Crim. Code of Germany (§ 51, R. G. B.).

The Code of France provides: "There can be no crime or offense if the accused was in a state of *madness* at the time of the act." For some time the French tribunals were inclined to interpret this law in such a manner as to follow in substance the law of England. But that construction has been abandoned, and the modern view of the medical profession, is now adopted in that country.

It is no satisfactory objection to say that the rule above announced by us is of difficult application. The rule in *McNaghten's case, supra*, is equally obnoxious to a like criticism. The difficulty does not lie in the rule, but is inherent in the subject of insanity itself; the practical trouble is for the courts to determine in what particular cases the party on trial is to be transferred, from the category of sane to that of insane criminals—where, in other words, the border line of punishability is adjudged to be passed. But, as has been said in reference to an every day fact of nature, no one can say where twilight ends or begins, but there is ample distinction, nevertheless, between *day* and *night*. We think we can safely rely in this matter upon the intelligence of our juries, guided by the testimony of men, who have practically made a study of the disease of insanity; and enlightened by a conscientious desire, on the one hand, to enforce the criminal laws of the land, and on the other, not to deal harshly with any unfortunate victim of a diseased brain, acting without the light of reason, or the power of volition.

Several rulings of the court, including especially the one given *ex mero motu*, and the one numbered five, were in conflict with this view, and for these errors the judgment must be reversed. The charges requested by defendant were all objectionable on various grounds. Some of them were imperfect statements of the rules above announced; some were argumentative, and others were misleading, by reason of ignoring one or more of the essentials of criminal irresponsibility as explained in the foregoing opinion.

It is almost needless to add that where one does not act under the duress of a diseased brain, or insane delusion, but from motives of anger, revenge or other passion, he can not claim to be shielded from punishment for crime, on the ground of insanity. Insanity proper, is more or less a mental derangement, coexisting often, it is true, with a disturbance of the emotions, affections and other moral powers. A mere moral or emotional insanity, so-called, unconnected with disease of the brain, or irresistible impulse resulting from mere moral obliquity, or wicked propensities and habits, is not recognized as a defense to crime in our courts.—1 Whar, Cr. Law (9th ed.), § 46; *Boswell v. State*, 63 Ala. 307, 35 Amer. Rep. 20; *Ford v. State*, 71 Ala., 385.

The charges refused by the court raise the question as to how far one acting under the influence of an insane delusion, is to be exempted from criminal accountability. The evidence tended to show, that one of the defendants, Mrs. Nancy J. Parsons, acted under the influence of an insane delusion, that the deceased, whom she assisted in killing, possessed supernatural power, to afflict her with disease and take her life by some "supernatural trick;" that by means of such power the deceased had caused defendant to be in bad health for a long time, and that she acted under the belief, that she was in great danger of the loss of her life, from the conduct of deceased, operating by means of such supernatural power.

The rule in *McNaughten's case*, as decided by the English judges, and supposed to have been adopted by this court, is that the defense of insane delusion, can be allowed to prevail in a criminal case, only when the imaginary state of facts would, if real, justify or excuse the act; or, in the language of the English judges themselves, the defendant "must be considered in the same situation as to responsibility, as if the facts, with respect to which the delusion exists, were real."—*Bosicell's case*, 63 Ala. 307. It is apparent from what we have said, that this rule cannot be correct as applied to all cases of this nature, even limiting it as done by the English judges, to cases where one "labors under partial delusion, and is not in other respects insane."—*McNaughten's case*, 10 Cl. & P. 200; s. c., 2 *Lawson's Cr. Def.* 150. It holds a partially insane person as responsible as if he were entirely sane, and it ignores the possibility of crime being committed, under the duress of an insane delusion operating upon a human mind, the integrity of which is destroyed or impaired by disease, except perhaps, in cases where the imaginary state of facts, if real, would excuse or justify the act done under their influence.—*Field's Med. Leg. Guide*, 101-104; *Guy & F. on Forensic Med.* 220. If the rule declared by the English judges be correct, it necessarily follows, that the only possible instance of excusable homicide, in cases of delusional insanity would be, where the delusion, if real, would have been such, as to create, in the mind of a reasonable man, a just apprehension of imminent peril to life or limb. The person's fear or timid cowardice of the insane man, although created by disease acting through a prostrated nervous organization, would not excuse undue precipitation of action on his part. Nothing would justify assailing his supposed adversary, except an overt act, or demonstration on the part of the latter, such as, if the imaginary facts were real, would under like circumstances, have justified a man perfectly sane in shooting or killing. If he dare fail to reason, on the supposed facts embodied in the delusion, as perfectly as a sane man could do on a like state of realities, he receives no mercy at the hands of the law. It exacts of him the last pound of flesh. It would follow also, under this rule, that the partially insane man, afflicted with delusions, would no more be excusable than a sane man would be, if, perchance, it was by his fault the difficulty was provoked, whether by word or deed; or, if, in fine, he may have been so negligent, as not to have declined combat when he could do so safely, without increasing his peril of life or limb. If this has been the law heretofore, it is time it should be so no longer. It is not only opposed to the known facts of modern medical science, but is a hard and unjust rule to be applied, to the unfortunate and providential victims of disease. It seems to be little less than inhumane, and its strict enforcement would probably transfer a large percentage of the inmates of our Insane Hospital, from that institution to hard labor in the mines, or the penitentiary. Its fallacy consists in the assumption, that no other phase or delusion, proceeding from a diseased brain, can so destroy the volition of an insane person as to render him powerless to do, what he knows to be right, or to avoid doing what he may know to be wrong. This inquiry, as we have said, and here repeat, is a question of fact for the determination of the jury in each particular case. It is not a matter of law to be decided by the courts. We think it sufficient if the insane delusion—by which we mean the delusion

proceeding from a *diseased brain* affecting the mind—sincerely exists at the time of committing the alleged crime, and the defendant believing it to be real, is so influenced by it, as either to render him incapable of perceiving the true nature and quality of the act done, by reason of the depravation of the reasoning faculty, or so subverts his will, as to destroy his free agency by rendering him powerless to resist by reason of *the duress of the disease*. In such a case, in other words, there must exist either one or two conditions: (1), Such mental defect as to render the defendant unable to distinguish between right and wrong in relation to the particular act; or (2), the overmastering of defendant's will in consequence of the insane delusion under the influence of which he acts, produced by disease of the mind or brain.—*Rex v. Hadfield*, 37 How. St. Tr. 1282, s. c., 2. *Lawson's Cr. Def.* 201; *Roberts v. State*, 3 Ga. 310; *Com. v. Rogers*, 7 Metc. 500; *State v. Windsor*, 5 Harr. 512; *Buswell on Insanity* §§ 434 and 440; *Amer. Law Review*, Vol. 4 (1869-70) pp. 236-252.

In conclusion of this branch of the subject, that we may not be misunderstood, we think it follows very clearly from what we have said, that the inquiries to be submitted to the jury then, in every criminal trial where the defence of insanity is interposed, are these:

1. Was the defendant at the time of the commission of the alleged crime, as matter of fact, afflicted with a *disease of the brain affecting the mind*, so as to be either idiotic, or otherwise insane?

2. If such be the case, did he know right from wrong as applied to the particular act in question? If he did not have such knowledge, he is not legally responsible.

3. If he did have such knowledge, he may nevertheless not be legally responsible if the two following conditions concur:

(1.) If, by reason of the duress of such mental disease, he had so far lost the *power to choose* between the right and the wrong, and to avoid doing the act in question, as that his free agency was at the time destroyed.

(2.) And if, at the same time, the alleged crime was so connected with such mental disease, in the relation of cause and effect, as to have been the product of it *solely*.

The rule announced in *Boswell's case*, 63 Ala. 308 *supra*, as stated in the fourth head note, is in conflict with the forgoing conclusions, and to that extent is declared incorrect, and is not supported by the opinion in that case otherwise than by *dictum*.

We adhere, however, to the rule declared by this court, in *Boswell's case*, *supra*, and followed in *Ford's case*, 71 Ala. 385, holding, that when insanity is set up as a defence in a criminal case, it must be established to the satisfaction of the jury, by a preponderance of the evidence; and a reasonable doubt of the defendant's sanity, raised by all the evidence, does not authorize an acquittal.

There was no error in overruling the objection taken by the defendants to the copy of the venire, or list of jurors, served on them. The act approved February 17, 1885, (Acts 1884-85, pp. 181, 185, Sec. 10), regulating the organization of juries, applies to this case, and provides that "the names of the jurors *so drawn*," in accordance with section 10 of the act, together with the panel, of thirty-six jurors provided for by section 9,

"shall constitute *the venire*," from which the jurors to try capital cases shall be selected.—Acts 1884-85, pp. 185-186. The rule on this subject declared in *Posey's case*, 73 Ala. 490, and *Shelton's case*, *Id.* 5, has no application under this act. These cases construe Section 4872 of the Code, which contains different language from the law here construed.

Under the rule announced in *Ford v. State*, 71 Ala., 385, 397, and authorities there cited, there was no error in excluding the proposed statement of Mrs. Nail. This testimony was defective, in not being preceded more fully by the facts and circumstances, upon which the opinion of the witness, as to the sanity of the accused was predicated, the witness not being an expert.—Rogers on Expert Test., § 61.

The other rulings of the court need not be considered by us.

The judgment is reversed and the cause remanded. In the meanwhile the prisoners will be held in custody until discharged by due process of law.

STONE, C. J., dissents, in part, and expresses his own views in a separate opinion.

Through the courtesy of Judge Montgomery, one of the judges of the Supreme Court, of the District of Columbia and also member of the Medico-Legal Society, I am enabled to furnish a brief resume of the case of John Daley, recently tried there, with a copy of that judge's charge to the jury.

PEOPLE VS. DALEY—SUPREME COURT, WASHINGTON, D. C.,

RESUME OF THE CASE.

MONTGOMERY, JUDGE.

About five o'clock in the afternoon of the 13th of July 1887, Joseph C. G. Kennedy, an old and respected citizen of Washington, left his real-estate office, near N. W. corner of Fifteenth street and New York Avenue, N. W., went diagonally across Fifteenth street to the N. E. corner of these two streets, and there deposited in a P. O. Box, some mail. He immediately turned around and started to retrace his steps.

At this instant a man slapped him on the back with his hand. Kennedy turned around almost involuntarily, and that instant, as he faced this man, he was stabbed with a long-bladed shoe knife, which almost literally disemboweled him.



CHIEF-JUSTICE CHAS. B. ANDREWS, of Conn.

He sunk to the pavement crying for help, and in three minutes he was dead. The crowd collected rapidly, and as they began to gather the man walked coolly away.

Some one in the crowd walked up, took hold of him, and demanded to know, why he struck the blow. He replied, in substance, that they would see in due time.

Of course, he was arrested and indicted. He proved to be one, John Daley, who, with his father before him, was an old citizen of Washington.

The father had been dead for several years, and the son (the defendant), had been to some extent a wanderer, and a vagabond.

He had spent one or more seasons in the almshouse, and had only been discharged therefrom the day next preceding the homicide.

When arraigned, he had no counsel, and no means with which to employ legal assistance. The Court assigned for his defense, Thos. N. Miller and Howard Claggett, Esq.

On the 3d day of January, 1888, the case was called for trial.

After considerable trouble, a jury was secured, and the following day the trial began. A. S. Worthington, Esq., District Attorney, assisted by A. A. Lipscomb, Esq., one of his assistants, conducted the prosecution.

The case was conducted with much skill and ability on both sides.

The defense relied entirely, on the alleged mental incompetency of the defendant.

On the trial it appeared that, many years before, he had voluntarily gone to live, at some Catholic Institution at or near Philadelphia.

That he took with him all his savings, amounting to a few hundred dollars.

That he remained there, serving in some humble capacity for several years, when he voluntarily left, and that ever since he had, on occasions, and whenever he had an auditor, told that the "brotherhood" had poisoned and tried to rob him, and that he suffered constantly from the effects of this poison. This was agreed on all hands, to be an hallucination and nothing else.

It also appeared, that the father of the defendant, years ago, had had dealings with Mr. Kennedy, and that since his death the son made claim, that the father had been cheated, or that something was due him at his death, which Mr. Kennedy failed or refused to pay to the defendant. It was further shown that, some months before the killing, the defendant met on the streets old Mr. Elliott, and assaulted him. When arrested and interrogated, his excuse was that he, Elliott, looked like one of the "Catholic brotherhood."

Doctors Godding and Chapin, who had examined defendant, at the request of the public prosecutors, testified that he was undoubtedly laboring under hallucinations, and explained fully the effects of such hallucinations.

The trial was finished and given to the jury, on the 12th day of January.

The following is the charge of the trial judge to the jury :

UNITED STATES SUPREME COURT, DISTRICT OF COLUMBIA.

PEOPLE VS. DALEY, MONTGOMERY, J.

Gentlemen of the Jury :

The defendant, John Daley, stands charged with the murder of Joseph C. G. Kennedy. The indictment alleges that the crime was committed on the 13th day of July, 1887.

The law, in its wisdom and humanity, provides for and demands in behalf of every man who may be charged with a violation of its criminal provisions, a fair and impartial trial, by a jury of his coun-

trymen, and this species of trial is declared to have "ever been looked upon as the glory of the English law," and "ever esteemed in all countries a privilege of the highest and 'most beneficial Nature.'" It is in obedience to this demand of the law, that you have been called here from your respective avocations, impanelled and sworn "well and truly to try" this most important case.

At the outset I feel impelled to especially enjoin upon you, the imperative duty which you owe to the government and to the defendant respectively, of giving this case, all its circumstances, and all the testimony, a careful, thorough, and exhaustive examination. When you get the case and retire to your room for consultation, all the testimony which has been given on the trial should be carefully and conscientiously examined, scrutinized, and weighed before you shall attempt to reach a final conclusion.

I think it well also to remind you here and now, of a fact which should constantly be borne in mind by you during your deliberations and it is this: the law imposes in cases of this character duties equally grave and equally responsible upon the Court and upon the jury, respectively. These duties, however, are wholly different ones. It is the province of the court to admit for the consideration of the jury all proper, competent legal evidence which may be offered. It is also the province and duty of the court to finally, as I am now attempting to do, instruct the jury in relation to the law, which should govern their deliberations and their determinations of the facts. With *this*, the important duties of the Court, so far as the trial is concerned, ceases, and the pre-eminently important duty of the jury begins.

The Court has no right, and has no desire to trespass upon the domain which belongs exclusively to you. The jury are the sole, only, and responsible judges of the facts, and upon these facts the Court must not have, and has not, any opinion to express or intimate.

The jury should receive and regard the instructions which the Court gives them concerning the law, but when they come to a consideration of the facts, and when they come to determine the truth in the light of these instructions, and of the evidence which has been given in open Court their prerogative is absolute.

You will see, therefore, gentlemen of the jury, that upon you in this case rests a very grave and very serious responsibility. I enjoin upon you that it be fairly met, and that your duty be discharged, no matter what result you may reach. After a careful, thorough, and conscientious deliberation your verdict should be fearlessly and honestly pronounced. You stand charged with a solemn responsibility to the government and to the defendant, respectively. If within the instructions, which I shall hereafter give you, you shall reach the conclusion that the defendant is guilty of the crime laid to his charge, you will meet your responsibility and pronounce your verdict without hesitation. If, on the other hand, after an exhaustive examination shall have been made, you shall be of the opinion that the charge

has not been established to your satisfaction, beyond the reasonable and rational doubt, to which I shall hereafter advert, you will as fearlessly and promptly acquit the defendant. I remind you here that in all criminal trials, the prosecution must prove the truth of the charge alleged against the defendant.

At the outset, and when the trial begins, the law presumes the defendant to be innocent, and the burden of overcoming this presumption by proof rests upon the prosecution. The government, the prosecution, must not only establish the case, which they present for your consideration, by a preponderance of proof, but you should, after looking over the entire case and all the testimony on both sides, and after a careful examination of all of it, reach the conclusion beyond a reasonable doubt, that the defendant is guilty, or he should be acquitted.

I mean to say that in this case, if the jury should, after a careful consideration of the testimony, and of all the facts and circumstances involved in and surrounding it, still entertain a reasonable, rational doubt, such a doubt as would deter the juror from embarking in an important enterprise, which he may contemplate in his own behalf, such doubt would entitle the defendant to acquittal.

The term "reasonable doubt", as applied to this class of cases, is not very difficult to understand. Every intelligent man will understand at once what is meant, when told that a conclusion should not be acted upon, unless he has reached that belief beyond a reasonable doubt. It is said to be "a fair doubt" growing out of the testimony in the case. It is not a mere imaginary capricious, or a possible doubt, but a fair doubt based upon reason and common sense. It is such a doubt as may leave your minds, after a careful examination of all the evidence in the case, in that condition that you cannot say that you have an abiding conviction to a moral certainty, of the truth of the charge", (proof to a moral certainty as distinguished from absolute certainty.)

And now, gentlemen, having said thus much in advance of the time and order in which such instructions are perhaps usually given, I proceed to present for your consideration what I have to say about *this case*. You have already been reminded that the defendant stands charged with the murder of Joseph C. G. Kennedy. On the part of the prosecution it is claimed that the defendant, during a considerable portion of the afternoon of the 13th day of July last, was lurking about or in the vicinity of the place where 15th Street, Northwest, intersects New York Avenue in this city; that he was, in fact, lying in wait for the deceased with the intent to take his life, when he should encounter him and get the opportunity. It is further claimed by the prosecution that Mr. Kennedy left his office, which is said to be situated on the west side of 15th Street, and near the corner of New York Avenue, and proceeded to the northeast corner of these two streets, where he deposited in a letter box at that point some

mail; and as he turned to retrace his steps or cross the street the defendant approached, followed behind, and overtook him; that he touched him on the shoulder, or on the back with his hand; that at the touch, Mr. Kennedy turned around, when defendant instantly struck him a blow, or stabbed him, with the knife which has been exhibited here, inflicting a serious and mortal wound, from which he expired on the spot where he was struck, and in a very few minutes thereafter. This is substantially the claim on the part of the prosecution. I do not understand that the fact of the homicide, the fact that Mr. Kennedy met his death at the hands of the defendant at the time and place, as claimed by the prosecution, is denied or disputed on the part of the defense. It is claimed, however, that the defendant was not waiting or watching for Mr. Kennedy, but that he was lying in wait for Dr. Elliott, if for anybody, with whom he had had a previous encounter. It is also urged on the part of the defense that the defendant was at that time in such a mental condition as to be legally irresponsible, criminally, for his acts. Or, in other words, that he was then, and that, indeed, he still is, an insane man. And here I advise you, as I have been requested by counsel for the defendant, that the question of insanity when interposed in a criminal case as a defense is entitled to be considered, and should be determined, with the same conscientious care and entire impartiality as any other legitimate defense.

I do not regard it necessary to attempt to explain to the jury the various instances in which the fact of mental irresponsibility in one or the other of its various conditions may or should excuse a person charged with crime from the consequences of a criminal act. Indeed, I have little doubt that such an attempt would serve rather to confuse than enlighten the jury in this case. I shall therefore confine myself to an attempt to explain to the jury so much of the law relating to this question of mental irresponsibility, in its relation to defenses in cases of charges of murder, as may be applicable to this case and no more.

You will remember, gentlemen, that the defendant stands charged with the crime of murder. This crime is defined to be "the unlawful killing of a reasonable creature in being (a human being) by a person of sound mind and discretion, with malice aforethought." If, therefore, in this case, the homicide, the fact of the killing, has been established to your satisfaction; that the deceased was killed by the defendant, that he stabbed him purposely and deliberately with the knife, as claimed, and with the intent to take his life; and that the blow, the stab inflicted upon the deceased, did result in his death, *then prima facie*, (presumptively) the case, the charge of murder is made out, and you should turn your attention to the defense.

It may be improper for me to again say here that I do not understand that any of these facts, to which your attention has just been invited, are controverted or disputed. At the threshold of this ques-

tion, I advise you that *prima facie*, in the absence of any proof to the contrary, the law presumes every person of sound mind. So presuming, as a matter of course, where an act of this kind, committed in *this* manner, is established, the case of the government is *prima facie* made out, and it rests with the defense, if insanity or mental irresponsibility be asserted, to offer proof upon this subject. That is to say, had this case stopped, had the proof closed when the government rested its case with no fact proven, except the time, place, and manner of the killing, then the defendant in the absence of any proof on the subject must have been presumed sane (of sound mind), and must have been held responsible for what he did. This being the law, it hardly needs be said that it follows logically and naturally that where the defense rests, in whole or in part, upon the alleged fact, that the defendant is not mentally responsible, then the onus, the burden rests on the defense, of first offering proof on this subject (of mental capacity) and to show that the defendant was mentally irresponsible, or at least that there is a grave, serious, reasonable doubt upon the subject. When they, the defense have done *this*, when they have fairly shown *prima facie* that the defendant's mental condition was such as to render him criminally irresponsible, then the onus, the burden shifts upon the prosecution, and it is then for it, the prosecution to show that the mental irresponsibility, the mental affliction did *not* exist, or that if it did, it was not of such character or degree as would render him, the defendant, irresponsible criminally.

In pursuance of this practice, the prosecution made and rested its *prima facie* case.

The defense then offered their evidence, and amongst it their proof on the subject of mental capacity.

Thereupon the prosecution properly attempted to show in rebuttal, what were the actual facts as regards this most important question from their standpoint.

The case has been exceptionally well prepared, and it has been presented on both sides with unusual clearness and ability. From the beginning, you gentlemen have given careful and patient attention to the testimony, and the important questions of fact to which the evidence has been addressed is now for your solution, aided so far as may be possible, by the instructions which the court is able to give you concerning the law applicable to them.

At this point I advise you, that the actual mental condition of the defendant at the time of the homicide is, so far as it is involved in this case, a *fact* to be submitted to and ascertained by the jury from the evidence in the case. "The state and condition of mind of the defendant is proved, like other facts, to the jury."

I do not understand that it is claimed by the defense that the defendant is, or ever was, in a condition of "frenzy or raving madness." It is claimed, however, I believe, and the defense insist.

1st.—That the defendant was on the day of the homicide afflicted with a "general deprivation of understanding" or in that condition of mind in which the mental powers were wholly perverted or obliterated. That he was "incapable of rational action."

2d.—Or if *not so* wholly irresponsible that at least "the legal and true character of the disease, the insanity of mind" with which the defendant was at the time of the homicide afflicted, was "delusion," or as the physicians express it, "illusion" or "hallucination." And it is urged that because, or growing out of, the mental condition of the defendant, as indicated or evidenced by such delusions, he could not and *did not* "understand the moral character, the general nature, the consequences and effect of the act (the homicide) with which he is charged, nor exercise his reasoning faculties with respect to it." Or,

3d.—That even if not in exactly either condition of mind, which I have just described, as the first and second claims respectively of the defense, he nevertheless was, because of his mental condition, because of delusions, or because of his mental condition, as evidenced or indicated by the delusions, he was impelled to do what he did "by an insane impulse, which, by reason of his diseased or disordered mind, he was unable to resist or control."

The defense claim that the evidence in the case establishes, that the defendant did, at the time of the homicide, entertain, and had for several years theretofore entertained, one or more insane delusions. Among them that he had been poisoned at the time and in the manner which you have heard detailed, and again that he had for several years harbored a delusion respecting some dealings had some years ago, between Mr. Kennedy and his father, and about which, after the death of the father, the defendant had some interviews or dealings or both with the deceased.

It is also urged that these delusions (as they are alleged to have been) were interwoven or connected together, or that at least the defendant, in his disordered mental condition, associated the Catholic brotherhood, whom he believed had wronged and were pursuing him, with Mr. Kennedy the deceased, and with the former dealings.

Please remember gentlemen that I have not been arraying before you my understanding of the facts, but I have simply stated as well as I can, my understanding of the position of the defense and of their theory of the leading facts in the case.

On the part of the prosecution it is denied:

1st.—That the defendant is or ever was wholly insane, wholly irresponsible, or,

2d.—That the delusions, if any, which he harbored had any connection with the homicide, and

3d.—It is claimed by the prosecution that the defendant was mentally responsible for crime. That he well understood what he was doing, its nature and character, and that it was wrong and criminal, and they urge that it was the cool, deliberate work of a man in pos-

ession of abundant mental capacity to render him responsible for his criminal acts, and that, in fact, the homicide was a deliberate, wanton murder, the outcome of a settled design to revenge himself for a real or fancied injury which he had, or supposed he had, previously suffered at the hands of the deceased.

It is also said by the prosecution, that the defendant was *not* laboring under an insane delusion as respects his dealings with Mr. Kennedy, but that the facts as they existed, and as the defendant understood them, might naturally induce the belief on his part, that he had really been wronged.

The prosecution do not assert, that he really *was* wronged by the deceased, but they do say, that he was warranted upon a superficial view of the facts, as he understood them, in *believing* that the wrong had been done him by Mr. Kennedy.

Now, gentlemen, as to these positions I advise you—

1st.—If the defendant was at the time of the homicide wholly incapacitated mentally, a “mad man,” without intelligent or rational understanding, or in a condition of frenzy or raving madness, I hardly need say that he is not responsible for his act. Again, I instruct you generally that a defendant charged with murder is “not to be held responsible when, at the time of the commission of the homicide, he was incapable of determining whether the act was right or wrong.”

In considering this case, and the defenses which have been presented, the jury should consider the following questions:

1. Was the defendant at the time, the time of the act, as matter of fact, afflicted with disease of the mind, was he wholly or partially insane?
2. If he *was* so afflicted, did he know right from wrong, as applied to the homicide in question?

If he *did* have such knowledge, had he, by reason of the duress of such mental disease, so far lost the power to choose between the right and the wrong, and to avoid doing the act in question, as that his free agency was, at the time, destroyed, and if so, was the homicide so connected with such mental disease, in the relation of cause and effect, as to have been the product of it (the mental disease) solely. If you are satisfied from the evidence that the defendant was mentally afflicted, so that he did not know right from wrong, as applied to the act, or if he *did* know, but by reason of the duress, the stress of his mental disease (if he had any), he had no power to choose, no power to avoid doing what he did, and if the homicide was the product of his mental condition solely, or, if by reason of the insane delusions which the defendant had been harboring (if any), he had reached that condition of mind where the morbid impulse to kill became irresistible, and existed in such violence as to subjugate his intellect, control his will and render it impossible for him to do otherwise than to yield and do as he *did*, then he is not to be held accountable.

"If some controlling (mental) disease was in truth the acting power within him, which he could not resist, then he will not be responsible."

"If a person commit a homicide under the influence of an unaccountable and irresistible impulse, arising *not* from natural passion, but from an insane condition of the mind, he is not criminally responsible."

On the contrary, if you are satisfied from the evidence that the defendant was *not* insane, either wholly or partially, that he had no mental affliction, or if you are satisfied that even though he *was* to some extent afflicted mentally; that he was, to a degree, mentally unsound, he still had sufficient capacity to understand, and did understand, right from wrong, as applied to his act, and you are further satisfied that there was no such duress, such stress of his mental disease as to render him powerless to choose, powerless to avoid doing the act, that his free agency was *not* destroyed, that the homicide was *not* the product of his mental infirmity (if he had any), then he should be held responsible and convicted as indicted.

"It is almost needless to add, that where one does not act under the duress of a diseased mind or insane delusion, but from motives of anger, revenge or other passions (understanding the nature and character of the act he is about to do, and that it is wrong), he cannot claim to be shielded from punishment for crime, on the ground of insanity."

And now, gentlemen, I can say very little more, to assist you in the discharge of your duty, in this most important case.

It must not be forgotten that cases of this character, are of overwhelming importance to the parties charged, as well as to the public and to society.

You will not fail to give to the consideration of this case your best efforts and your most faithful and earnest devotion.

You will not neglect to carefully, scrupulously and faithfully review and discuss with each other, all the evidence which has found lodgment in your minds, and when, after you shall have done all these things, you reach, as you doubtless will, a conclusion, to which you shall all be able to agree, you will act upon it and return into court and pronounce your verdict.

If upon the whole case, as it has been presented, you shall finally entertain a reasonable, rational doubt as to the guilt of the defendant of the crime laid to his charge, then he should be acquitted. If you are satisfied beyond such doubt that he is guilty, then he should be convicted.

Take the case, go to your room, reach your conclusion in the light of the law; return into court and declare the result, and all good citizens will respect your determination whatever it may be."

The jury found a verdict of not guilty.

The prisoner was acquitted and sent to the Government Hospital for the Insane at Washington, in charge of our member, Dr. W. W. Godding, Medical Superintendent.

At my request, he has furnished me with the following statement, of the present mental condition of Daly:

GOVERNMENT HOSPITAL FOR THE INSANE,
WASHINGTON, D. C., May 23, 1888.

CLARK BELL, Esq.,

President Medico-Legal Society, New York:

MY DEAR SIR:

I herewith enclose brief statement of Daley's condition at present time.

Yours very truly,

W. W. GODDING.

John Daley, a native of Ireland, age about 50, admitted to the Government Hospital for the Insane January 14 1888, by order of the Secretary of the Interior, having been found not guilty of the murder of Joseph C. G. Kennedy, Esq., of Washington. This by reason of insanity. He has remained without apparent change in his mental condition since his admission; he is quiet and orderly, and makes no complaints, but manifests evidence of delusion & ideas, that are so far controlling ones, that he shows no disposition to do any work, and when asked about himself, calls attention to sores on the surface of his body, the result, as he says, of poison.

I regard the case as one of chronic mania characterized by delusions that are fixed, and likely to remain so. Those who are curious in classification, and ambitious to air their nomenclature might call it paranoia, but the conditions are essentially those, of chronic insanity of the type of mania.

His bodily health has improved somewhat, and he has gained flesh since admission to St. Elizabeth.

W. W. GODDING, M.D.

These two cases, the former a decision of the highest Appellate Court in the State of Alabama, and the latter, by one of the judges of the Supreme Court of the District of Columbia, at the National Capitol, indicate the change which is going on, this side the Atlantic in the judicial mind. I trust it will in the near future, be universal in the American States, and help to lead the way to such legislation in the English Parliament, as that contained in the law, proposed there in March, 1884, the work of an

eminent English jurist, with the approval of the late Chief Justice COCKBURN, setting at rest in English speaking countries a question, so full of interest to every citizen, and so pregnant with the rights and destiny of the insane.

*NINTH INAUGURAL ADDRESS.**

OF CLARK BELL, Esq.

AS PRESIDENT OF THE MEDICO-LEGAL SOCIETY.

FELLOWS OF THE MEDICO-LEGAL SOCIETY :

I have to thank you for your great partiality and kindness in again placing me in this chair, with such unanimity, as well as for the kind manner in which you have aided the chair in the very important, and responsible labors of the year.

MEMBERSHIP.

The Roll of Membership of this body, on December 31, 1887, was 432, composed as follows: Active, 273; corresponding, 148; honorary, 11.

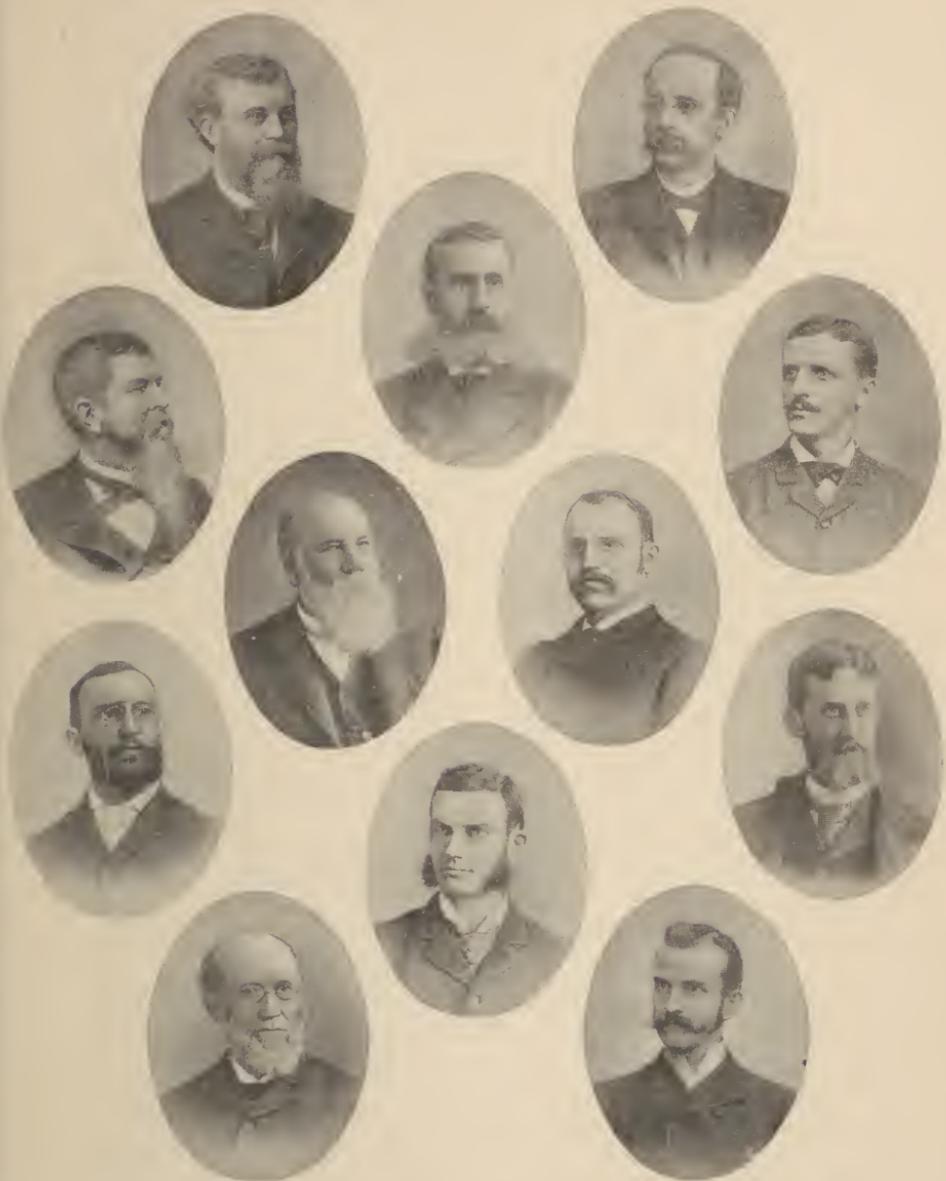
Of these, among active members there were: Lawyers, 138; doctors, 124; scientists, 11.

Of corresponding, there were only 19 lawyers, 119 physicians, and scientists, 10. Of the honorary members, 5 were legal and 6 medical, making a total of legal, 163; medical, 248; scientific, 21. There was upon the roll 594 members, on December 31, 1888, of whom 429 are active, 154 corresponding, and 11 honorary.

We have elected during the year 163 active and 10 corresponding members, a total of 173, and our present active membership is composed among active of: Legal, 158; medical, 254; scientific, 17. Our corresponding, of legal, 20; medical, 124, and scientific, 10, with 5 legal and 6 medical on the honorary list.

So that in our total membership at the close of the

*Pronounced January 9, 1889.



EMINENT AMERICAN ALIENISTS AND PHYSICIANS OF THE MEDICO-LEGAL SOCIETY AND OF THE
INTERNATIONAL CONGRESS OF MEDICAL JURISPRUDENCE.

DR. SILAS D. PRESBERY,
Ex President Massachusetts Medico-Legal Society.
Taunton, Mass.

MARSHALL D. EWELL, M.D.,
Professor of Medical Jurisprudence,
Chicago, Ill.

DR. D. R. WALLACE,
Superintendent Insane Asylum,
Terrell, Texas.

DR. THOMAS G. MORTON,
Chairman Pennsylvania State Lunacy Board.

DR. MORRIS H. GUTH,
Assistant Superintendent State Hospital for Insane, Warren, Pa.

DR. GEO. D. WILCOX,
Ex-President Rhode Island Medico-Legal Society, Providence, R. I.

DR. GEO. F. KEENE,
Superintendent State Insane Asylum,
Howard, R. I.

DR. W. THORNTON PARKER,
Medical Examiner,
Newport, R. I.

DR. WILLIAM F. TAYLOR,
Secretary Massachusetts Medico-Legal Society,
New Bedford, Mass.

DR. M. J. WHITE,
Superintendent Insane Asylum,
Wauwatosa, Wis.

DR. R. L. PARSONS,
Superintendent Insane Asylum,
Sing Sing, N. Y.

DR. FRANK P. NORBURY,
Assistant Physician Insane Asylum,
Jacksonville, Ill.

past year, December 31, 1888, we had : Legal, 183 ; medical, 384, and scientific, 2*i*.

We have lost by death 7 active and 4 corresponding, making a total of 11, and our increase of active and corresponding membership over deaths, resignations and suspensions, has been for the year : Active, 156 ; corresponding, 6. Total, 162.

NECROLOGY.

The loss by death among the active members has been seven :—Dr. James Craig, of Jersey City ; Dr. A. J. Chadsey, of New York ; Hon. W. A. Dorsheimer, of New York ; Hon. Chas. Hughes, Sandy Hill, N. Y. ; Cornelius A. Runkle, Esq., of New York ; M. N. Miller, M.D., of New York, formerly assistant secretary of the society ; Dr. O. H. Kellogg, of Indiana ; J. E. McIntyre, Esq., formerly secretary of this society, and late of California ; and of the corresponding members, Achille Foville, M.D., of France ; J. N. Ramaer, of Holland ; Prof. Augustin Andrade, of Mexico ; Dr. Enrique a Fremont, of Ozuluamo, Mexico.

THE WORK OF THE YEAR.

The following papers have been read before the Society and many of them published in the MEDICO-LEGAL JOURNAL :

“ Eighth Inaugural Address,” by Clark Bell, Esq. ; “ Criminal Jurisprudence,” by P. Bryce, M.D. ; “ Best Methods of Executing Criminals,” by J. Mount Bleyer, M.D. ; “ Hypnotic, Trance and Kindred Phenomena,” by E. P. Thwing, M.D. ; “ The Menopause in relation to Insanity,” by T. R. Buckham, M.D. ; “ The Prognosis of Pelvic Cellulitis,” by W. Thornton Parker, M.D. ; “ Possibility of Air in Heart in Infanticide,” by F. W. Higgins, M.D. ; “ The After-death Absorption of Arsenic,”

by Geo B. Miller, M.D.; "Report of Committee on Best Methods of Capital Punishment"; "Medical Jurisprudence of Inebriety," by Mary Weeks Burnett, M.D.; "American Life as related to Inebriety," by Edward Payson Thwing, M.D.; "Rape by Boys," by Daniel Brinton Esq., of Baltimore; "A Case of Supposed Abortion," by W. Thornton Parker, M.D., of Newport; "Report on Nationalization of the Society," by the President, Clark Bell, Esq.; "Is Belief in Spiritualism ever Evidence of Insanity *per se?*?" By M. D. Field, M.D.; "The Webber Murder Case, in Philadelphia," by Wm. Wilkins Carr, Esq., of Philadelphia; "The New Judicial Departure in Insanity Cases," by Clark Bell, Esq.; "Should Inebriates be Punished by Death for Crime?" by T. D. Crothers, M.D., of Hartford; "Physiology and Psychology of Crime," by Rev. Wm. Tucker, LL.D., of Ohio; "Hypnotism," by Morris Ellinger, Esq.; "Euthanasia in *Articulo Mortis*," by E. Payson Thwing, M.D.; "Testamentary Capacity in Mental Disease," by A. Wood Renton, Esq., of London; "Report of Committee on Execution by Electricity"; "Death by Electricity in Capital Cases," by Henry Guy Caireton, Esq.; "Circumstantial Evidence in Poisoning Cases," by John H. Wigmore, Esq.

NATIONALIZATION OF THE SOCIETY.

By far the most important of the labors of the Society during the past year has been that of assuming the national character and organization, which the history, labors and traditions of the Society entitled it to accept.

It had for many years represented the best American thought, upon Medical Jurisprudence in both professions; it was proper that it should be national and cease to be local in its labor. The organic law was amended.

Members from the various States and Territories, and other countries united, and at our recent election, vice-presidents of the body were elected from nearly every State and Territory in the Union, and from some foreign countries and colonies. To this movement so much of the time of the chair has been devoted that other interests have perhaps suffered for want of proper attention.

The accessions from other States and countries have been very large. It may seem invidious to name particular States, but the palm has been closely contested by the greatest of the Southern States in territory, Texas, and the smaller State of New Hampshire, the latter of which has thus far furnished most of our new membership in proportion to her area and population. For this result in New Hampshire, I desire thus publicly to express the thanks of the body to United States Senator W. E. Chandler, to whose valuable and efficient co-operation with the chair this result is largely due, and to Dr. T. R. Wallace, of Texas Insane Asylum, and Hon. Thomas Ochiltree for the great success in Texas.

To carry such a work into every State and Territory, reaching the more prominent members of the professions interested, is no small labor, but the coming year will doubtless double our labor of 1888 and make this Society one of the most commanding and prominent factors in the advancement of Forensic Medicine among civilized nations.

The great success that has attended our labors in this respect, is also largely due, and I take pleasure in thus acknowledging the very efficient aid of Senator Davis, of Minnesota; Senator Beck, of Kentucky; Governor Green, of New Jersey; ex-Governor Hoyt, of Pennsylvania; Judge Somerville, of Alabama; Judge Montgomery, of Washington, D. C.; Judge Normile, of Missouri;

Dr. T. R. Buckham, of Michigan ; Dr. Milo A. McLelland, of Illinois ; ex-Governor Watson C. Squire, of Washington Territory ; Judge Wm. H. Francis, of Dakota ; and that distinguished body of Superintendents and assistant physicians in the Hospitals for the Insane, more than thirty two of whom have united with the Society during the year that has just closed, and who have without exception lightened the labors of the chair in this regard.

Too high praise cannot be awarded to the splendid aid lent by the public press to the work of this body. The New York *Herald* has given it great attention. The New York *Tribune* has also given our work high endorsement and praise. The *Mail and Express* published the prize essay of Mr. Wigmore. The New York *World* published the paper of Mr. Carleton. The *World* and *Sun* have loaned us electrotypes, and the leading journals of this city have extended courtesies of great importance, and are entitled to our thanks. To the Medical and Law journals, home and foreign, are we greatly indebted for like favors, and it gives me pleasure to publicly return the thanks of this body to the press for its cordial aid.

THE PRIZE ESSAYS.

Through the generosity of that public-spirited member, Mr. Elliott F. Shepard, and the private contributions of a few of our more enterprising members, three prizes were offered—one of \$100, one of \$75 and one of \$50, for the first, second and third best essay on any subject within the domain of medical jurisprudence.

There were ten papers contributed in competition, and the prizes were awarded by a committee composed of Ex-Judge Noah Davis, Ex-Judge John F. Dillon, W.

G. Stevenson, M. D., Stephen Smith, M. D., and E. W. Chamberlain, Esq.

The first prize was awarded to John H. Wigmore, Esq., of Boston; the second to J. Hugo Grimm, Esq., of St. Louis, and the third to Edward M. Hyzer, Esq., of Janesville, Wis. Honorable mention was made of a second paper by Mr. Wigmore, one by Prof. Ed. Payson Thwing and one by the President of the Society. As it will be hardly possible to find space in the Journal for all these papers, I recommend that the larger part of them be published in book form, under the auspices of the Society, if sufficient encouragement is given by members towards providing the necessary funds without expense to the Society. The three prize essays and those receiving honorable mention could be published so as to sell to members at cost who subscribed, at the nominal sum of \$1.00, in cloth, and 50 cents in paper; and, if sufficient members order them, they will be published and will form a notable contribution to the forensic literature of our times, and add to the good work of the Society.

The success which has attended this effort has been such as to warrant its continuance, and I have the honor to announce that I will offer in my own name the first prize of \$100 for the best essay of the ensuing year, competition to close September 1, 1889; and I do not doubt that similar prizes for second and third best essays will be provided for same amounts, by subscription, which will be shortly sent to a few of the leading public-spirited members of the body.

PUBLICATIONS.

The Society during the year has published a volume on the "Medical Jurisprudence of Inebriety," embracing

the more notable papers germane to that topic read before it, with the discussion upon them. This volume has just been issued, and is offered to members at 50 cents cloth and 35 cents in paper.

It is a publication which reflects credit upon the Society, and is a valuable addition to the literature of our era on a topic now engrossing so large a share of public attention.

“Medico-Legal Papers, Series 4,” has progressed, and about one-half of the volume of 550 pages is completed. Subscriptions to this work, and to “Series 5,” which will follow it, come in constantly, which have been announced in the Journal.

It is only by these subscriptions—at \$3.50 cloth, and \$2.50 paper—that the body has been able to publish these valuable papers read before the Society prior to the commencement of the Journal, and the consequent preservation and addition of the same to the forensic literature of our era.

“Medico-Legal Papers, Series 1,” has for some time been out of print, the edition being wholly exhausted.

An effort is now being made to publish another edition of “Series 1,” embellished with portraits and illustrations, which will be done if those members who have not that series in hand care to subscribe. It can be furnished at \$3.00 in cloth and \$2.25 in paper, and if sufficient members order it, the publication will be commenced without expense to the Society beyond subscription to the usual number of copies for those societies and journals to whom it is under obligation to send copies of its publications.

The MEDICO-LEGAL JOURNAL has been, perhaps, the most important factor in carrying on the work of the body. Its circulation has increased and its exchanges

are now with the best journals of the kindred sciences in the world. By it the labors of the body and interest in the subjects discussed reach the students, workers and thinkers in forensic medicine in all lands.

The burden and labor of this publication has fallen on a few. The members of the Society have been furnished with it, at less than its actual cost. The moment the finances of the Society will permit, these conditions should be changed, and members of the Society who can, should aid the Journal in all ways in their power, by increasing its subscribers and sending it financial support.

THE LIBRARY.

The principal contributors to the Library during the past year have been our new and our foreign members. Some measures should be adopted to place the Library on a more firm foundation and to interest members in its success.

The extraordinary duties now imposed upon the Chair has prevented that personal attention hitherto given this important subject, and some one should volunteer to take up this neglected question, and bring the cause of the Library to the front. If every member would annually donate one volume, it would add notably to our already valuable collection.

PROGRESS OF THE SCIENCE.

There is steady growth in this country in medical jurisprudence.

The Medico-Legal Societies of Philadelphia and of Chicago are in a most flourishing condition.

The Medico-Legal Society of Massachusetts and of Rhode Island, composed of the Medical Examiners in those States, who supersede there the Coroner system,

are doing splendid work and awakening interest in medico-legal questions.

In some of the State Medical Societies medical jurisprudence is ignored, and in some it is cared for.

In the associations of the Bar it is almost wholly ignored.

In the medical colleges it is, in some cases, given attention, and in a few of the law schools, but it is a scandal upon both professions that their schools of law and of medicine give so little attention to those subjects now so exciting public attention, and which are entitled to professional recognition from every point of view.

LUNACY LEGISLATION.

The crying evils of our lunacy statutes, everywhere acknowledged, and to which attention has been called by the Governor of the State, is cause of regret and apprehension.

Various measures for relief have come before the legislature and the people. Several are now under consideration.

It is my deliberate conviction that no sound remedial legislation is attainable in the State of New York, except by or through a legislative commission, or a commission named by the Governor of the State. This has been previously urged upon the executive and legislature, by the Medico-Legal Society. We trust that the time is near at hand when a carefully selected commission will be named and charged with the duty of a thorough revision of the Lunacy Law of the State.

JUDICIAL EXECUTIONS BY ELECTRICITY.

The abolition of hanging as a death penalty has been for many years discussed in this body.

The "Diagnosis of Hanging," by Tardieu; "The Death Penalty," by Dr. Alonzo Calkins; a like paper by Prof. Packard of Philadelphia, and the recent papers by Dr. J. Mount Bleyer and Henry Guy Carleton, Esq., have been read before the Society at various times during the past fifteen years.

The committee appointed by the Governor made their report upon the subject, January 18, 1888, recommending the abolition of hanging, and the substitution of death by the electric current.

The select committee of this Society reported at the March meeting, favoring the course recommended by the State Commission, and their action was transmitted to the legislature soon after by this society.

The legislature passed an Act carrying out the leading features of the report, and the Governor signed the bill which, by its terms, went into operation January 1, 1889.

The Medico-Legal Society, on the recommendation of the Chair, named a committee to examine the whole subject, conduct experiments with the aid of competent electricians, and report for the benefit of the public authorities, the best method of carrying this law into effect.

This committee made a report in December, 1888, recommending the use of the alternating current, which had the endorsement of high electrical authority, was approved by the body, and the subject is now under discussion in scientific circles throughout the world.

THE INTERNATIONAL CONGRESS OF MEDICAL JURISPRUDENCE IN NEW YORK.

On the first Tuesday of June, 1889, there will be held in New York, an International Congress of Medical

Jurisprudence, to which all scientific bodies and scientists throughout the world are invited to be present, and contribute papers, in any language.

It will continue four days, and the delegates and strangers during the session will be the guests of the Members of the Medico-Legal Society. A large attendance is expected, and already many papers have been promised by eminent scientists, home and foreign. A volume of the transactions of this Congress will be published, to be furnished subscribers in paper cover, at \$1.50 each ; cloth, \$2.00.

The details will be settled by appropriate committees to be hereafter announced.

A Committee on the Legal Requirements of Autopsies is nearly ready to report.

The Committee on Hypnotism is conducting its experimental work.

Committees on Re-Organization of the Morgue ; on Criminal Responsibility of Deaf Mutes ; on National and State Chemists, and on the "Comstock Seizures" have not concluded their labors.

The Committee on Legislation Regarding the Insane, will be continued for work during the coming year, as to uniformity in laws of the various States, and the newly re-organized committees will be announced hereafter.

GREAT BRITAIN.

There has been no especial advance made in Forensic Medicine during the past year, nor has any National Society been organized in the British Isles. The amendments to the Lunacy Laws are still pending before the English Parliament.

FRANCE.

The Medico-Legal Society of France carries forward its work with vigor and ability.

The French Journals are as able and influential as in previous years.

GERMANY AND AUSTRIA.

While there is no Society of Medical Jurisprudence in any of the German speaking countries, the science receives considerable attention from the Societies of Psychiatry at Berlin, and at Vienna. The *Quarterly Journal of Medical Jurisprudence* in Berlin, and *Fredicks Blaater of Legal Medicine* at Nuremburg, maintain their high standard of excellence. Nearly all the allied sciences, and that of law are ably maintained by a great body of able Journals in Austria, Bavaria, Germany and all the German speaking cities and counties.

ITALY

has no Medico-Legal Society, but it has a large body of workers in the science, and the ablest array of Journals of any country.

La Revista Sperimentale di Medicin Legal is a standard Journal of the Science, and the Legal, Social Medical and Scientific Journals of Italy are second to none in the world.

BELGIUM AND HOLLAND.

The Society of Mental Medicine of Belgium and the Netherland Society of Psychiatry represent the leading work in that branch of medical jurisprudence relating to mental medicine. A movement is on foot in Belgium to organize both professions into work upon medical jurisprudence in a Medico-Legal Society which has the favor of medical men there. If the Belgian Bar meets

this in the proper spirit it will produce early and good fruit for the progress of the cause.

RUSSIA AND SCANDINAVIA.

The Society of Psychiatry of St. Petersburg, under the able presidency of Prof. Mierzejewsky, and the leading Russian and Scandinavian journals, keep pace with the advance of scientific progress in forensic medicine in these countries, which have no journal especially adapted to medical jurisprudence except the new one recently started at St. Petersburg, which has not been received by us. The journals conducted by Prof. Mierzejewsky and Prof. Kowalewsky maintain their high standing.

SPAIN AND PORTUGAL

have both made progress. A new journal devoted to medical jurisprudence has been commenced at Madrid, under the leadership of a prominent lawyer, Signor A. M. Alvarez Taladriz, which gives promise of good work, while in Portugal a successful journal is conducted by Dr. Bettencourt Rodrigues, which is received in exchange for our publications.

CENTRAL AND SOUTH AMERICA.

No societies are yet formed in the Central or South American countries of the two professions of law and medicine, but able journals are published in Cuba and elsewhere, mainly on medical topics. Quite a number of eminent men in these countries take an interest in our labors, and we are extending our membership into these fields.

THE WORK OF THE COMING YEAR.

The principal effort should be to carry forward with energy the work of nationalization of the body, and se-

cure members in every State and Territory, and in each foreign country and colony, who will be in relation with this body and represent the work in every locality, increasing our membership to at least 1,000 members to co-operate in the movements now going forward to bring the lunacy laws and other laws of the various States into some general system of harmonious working.

To compete the labors of the various committees of the body.

To devise best plans by which the members in the various States and countries can bring questions arising in their locality to the attention and action of the body, and to develop and increase the public interest in forensic medicine.

I renew the recommendations made by me last year as to the importance of State and National chemists, under the pay of the State or the government, to be at the service of accused persons or the government in criminal trials.

I strongly urge the re-organization of the Morgue upon a basis that shall place its administration in charge of the most eminent toxicologists and scientists in the city, with a well-equipped medical staff ; I recommend that this body, through an appropriate committee, urge upon the medical schools and colleges the urgent need of chairs of medical jurisprudence as a feature of medical education, and upon the State Medical Associations the organization of a separate section upon forensic medicine. Upon the higher universities the great importance of this science, and to the National and State Bar Associations of the Union the establishment of standing committees on that much neglected but essential branch of a complete legal education, "Medical Jurisprudence." I congratulate the Society upon the wonderful growth and

prosperity of the past year, and hope that we may all enter with renewed zeal and energy upon the labors of another, determined to outstrip the work of the year just closed.



DR. VICTOR DESGUIN.



DR. VLEMINCKX.



DR. JULES MOREL.



MONSIEUR ALFRED MOREAU.



DR. B. C. INGELS.



DR. J. A. PEETERS.



BROTHER HILDOUARD.



DR. SEMAL.



DR. DE CRAENNE.



DR. F. LENTZ.



BELGIUM AND HER INSANE INSTITUTIONS.*

BY CLARK BELL, Esq.

President of the Medico-Legal Society of New York.

Belgium is a country usually spoken of as the most densely populated of any portion of the globe, unless some portions of Java be excepted (which are rarely alluded to by the statistician).

A country about the size of the State of New Jersey, in the United States of America, having an area of 11,373 square miles, or 7,278,968 acres of land, and in 1880 a population of 481 souls to the square mile. She is the sixteenth of the European States in area, being only about one-eighth the size of Great Britain, and the eighth in population. She has had a very eventful political history, but the Belgium of to-day is the creation of our present century, and is probably one of the freest, and best governed of the limited monarchies of the world. The Belgians differ from any other people I have ever visited in this: that they seem as a nation to be entirely satisfied and contented with their lot. There is little or no emigration to the United States, or to any portion of the world from Belgium. They are a thoroughly careful, economical, industrious, prudent and thrifty people, and perfectly contented with their homes and their country. While we meet occasionally in the great cities of the world, London, Paris, New York, Berlin and other great centers, a

* Read May 8, 1889 before the Medico-Legal Society. This paper received honorable mention from the Committee of Award of the Medical-Legal Society among the prize essays of 1888.

few enterprising Belgians, in trade and commerce, it is very seldom we come in contact with them in any capacity whatever outside of their own country, and we must needs study them at home.

Belgium is a level country, very much like Holland, especially that portion lying on the northeastern border, but it is more hilly, in that region upon the confines of France. It had over five million and a half people in 1880, to be exact, 5,519,844.

It has a million more people than all the New England States combined, although it is smaller in area, than any of the United States, except Rhode Island. It has nine provinces—Antwerp, Flanders, Hainault, Nameur, Luxembourg, Liege, Limburg, and Brabant. The principal rivers are the Schelde, the Meuse and the Yzer, all navigable, the former 108 miles, the Yzer 115 miles, and the latter 26 miles. The North Sea washes its northwestern coast, and while it is only 174 miles from Ostende, the northernmost city, to Arlon in the extreme southwest, its greater frontier line adjoining France, is 384 miles and its greatest breadth if from north to south 105 miles.

I have passed over Belgium twice—always in the season of the harvest—(July and August). It is a country that is cultivated beyond, and higher, than the average of the European States—for example, in England, where farms are cultivated to a much higher degree than with us—Lincolnshire for instance, I have known land to rent for \$12.50 per acre. In Belgium farms rent for \$22.00 per acre. The average rental of English farms is from \$6.00 to 9.00 per acre. That of Belgium farms is from \$15.00 to \$22.00. The Belgian farmer frequently expends \$6.00 to \$9.00 an acre in manures. The average price of the Belgian farm lands is about \$400 per acre, but

farms run as high in price there as seventeen-hundred, and two thousand dollars per acre. The cultivation of the Belgium farms greatly excels, and their lands sometimes double in products, the English farms. The great Belgian product is rye. We see enormous quantities, growing in the fields, and it is largely eaten by the people. The farms of Belgium are almost all small, extending back a long distance from the highways in narrow strips, without fences. Many farms in Belgium are not wider than fifty to one-hundred feet: they are all in small divisions, and often extend long distances, very narrow in width. Upon this portion or strip of land, one part is cultivated to one crop, and another to another; the work is done almost wholly by the women, excepting ploughing and gathering some portions of the grain.

Of the 6,582,120 acres of cultivated land there are 744,000 farms, or an average of less than nine acres to a farm. One quarter of all Belgium's population is devoted to agriculture, and of every one hundred workers on farms, sixty-one are women. Of these farms, only 80 per cent. exceeds 8 acres in extent; 71½ per cent. do not exceed 25 acres; 36 per cent. do not exceed 13 acres and 56 per cent. do not exceed 2½ acres.

Let me describe the Belgian farm-house to show how we must judge Belgium regarding its methods of treatment of the insane. Belgian farm-houses are usually one and a half stories in height. Imagine a long house, cut off a room at one end, the place where the family live, and take their meals, with one spare room at extreme end; the middle room is the kitchen with its fire-place, 10 or 15 feet wide. In this fire-place swings an enormous crane, and hanging upon this a kettle, with a capacity of one, two or three bar-

rels, depending upon the standing and responsibility of the family. In most houses a little railway, on the ceiling above, is operated by a chain, running down to this kettle, so that the housewife can run the kettle like a car around through the door, entering the part of the farm-house where the animals are kept, in the same house and underneath the same roof. On one side are the cows (and sheep if they are able to keep them), and on the other side are the swine (no horses), these are kept elsewhere and are usually attended to by the men. This large kettle is used for cooking the food which the animals consume. They are kept in their stalls. The people live without exception, even the Mayor of the towns, in this way, and in most cases. the animals are under the same roof where the family sleep, under the care and charge of the women, and this universal condition of family farm life, must enter into the subject of which I am to treat, to judge of it properly.

The women of Belgium, are, as a rule, healthy, happy and contented. They do not seem to be subject to the diseases, and especially those weaknesses which affect the women in America. Whether this is due to the laborious life they lead, especially their out-door work, in the field upon the farm, others may answer, but it is an undoubted fact. All the work of taking care of the animals (excepting taking care of the horses) is done by the women. The planting and principal cultivation of the crops, is also largely done by the women. Such a thing as a mowing machine, or a reaper is rarely to be seen in Belgium, or indeed any of the improved modern agricultural implements, in universal use with us. The reason is obvious. It would not pay the Belgian farmer to buy a reaper for the cutting of so little grain, as he raises, and on so small a piece of ground as he cultivates.

The rye is cut very close to the ground, with an implement different from anything I ever saw used at home. The article of pork, the famous Westphalian hams, are sold here for two francs per pound, and cannot be bought cheaper. A fine hog brings \$40 to \$50; pork is the most expensive of all meats; beef costs a little over a franc a pound. This enormous population, which is more than one quarter farmers, raises the food which the people of the whole country eat, and the Belgian peasant rarely eats meat, except on fete days and holidays.

The government of Belgium is a limited monarchy, where the people elect both houses of the legislature, the Senate and House of Representatives, and no law can be enacted unless the bill is signed by the Minister of State. The people of Belgium rule that country as substantially and completely, as do the people of Great Britain and more than those of Germany. The Belgian laws are carefully prepared, kept and enforced, and it would be impossible to infringe upon the rights of the people; their position is too secure.

There are nine political divisions or subdivisions, which have each a separate government and a separate and distinct set of officials, who govern in all local affairs, including eleemosynary institutions and insane asylums, which are under the direct supervision and management of the general government at Brussels.

Belgium has more miles of railroad probably than any other country in proportion to its size. Almost all these railroads have been built and are owned by the Government. I think their system of railroads the best in the world; and I will explain why. In the first place there are three kinds of trains, the first, second and third class, with prices regulated by the Government accordingly.

There is no such thing as a high price ; if you should take a first-class train on the most expensive lines, it would still be very cheap, as compared with other countries.

There is a system of trains also divided into first, second and third class, that go at slow speed, about 20 or 25 miles an hour, at about half the price of trains going at higher rates of speed; there is still another faster series, where the price is about one-third higher, called the express. While they have the continental system of passenger cars, there is frequently an arrangement by which you can pass through the cars in motion, and where they are not shut off from the others, as in England and France. The post office and telegraph is also managed by the Government in Belgium. If there is one thing studied more than another, in all departments, it is the economy of the management, its practicability and cost ; everything is submitted to, and governed by that test.

THE INSANE.

The care of the insane is a growth, of the work as done by institutions, founded in early times, on religious principles. As we think of them now and criticise them, we must consider this, and regard them from that standpoint. The present government took hold of these institutions, not, perhaps, as they would now make them, but as they found them, and upon this as a starting point built the present system of asylums and colony management of the insane as it to-day exists in Belgium.

In this population of five million and a half of souls, there are at present about ten thousand insane people ; which is not very far from the proportion of the insane in the United States. The best statistics



CHIEF JUSTICE L. E. BLECKLEY



JUDGE THOMAS J. SIMMONS.



JUDGE SAMUEL LUMPKIN.

I have seen, are based upon the census of 1880, which would put the insane of the United States of America at 91,997, of which 40,942 were in asylums, excluding idiots. They are not classed under our system as insane, but as our defective population, with the blind, deaf and dumb, into four distinct classes by our census. There is probably over sixty millions population in the United States at this moment, and within our borders, 100,000 insane if calculated by the law of probabilities, that has hitherto held in the increase in our population, and the relation the insane bear to it, so that the relative proportion of the insane in the two countries, Belgium and the United States, is very much alike, but there is a very great difference in their condition.

Now, while I say that the Belgian people are contented with their own country, it cannot be said of Americans that they are contented. We do not care to live in the same house and village where our grandfather and grandmother lived ; we are more nervous, more ambitious, more aggressive, nomadic, restless and agitated than the Belgians, and that may have its influence on the insane—there in the one direction—and here in the other. The insane institutions of Belgium may be divided into two classes, the public and the private. Of the former, that at TOURNAI ; that at AVERRE, near BRUSSELLS, under DR. VAN VAUF ; the HOSPICE GUISLAIN AT GHENT ; for females, at MONS ; the Asylums at ERPIDMONT ; at COURTNAI, and that most noted of the latter and private asylums, that of SHAERBECK, near BRUSSELLS ; that of RICKEL, near BRUSSELLS ; ST. JULIEN INSTITUTE at BRUGES and ST. MICHAELS ; ST. DOMINQUE at BRUGES ; the two women's hospitals at Ghent and a similar one for males—a notable one—which with others making in all forty institutions for the insane, upon the

authority of the official report of 1881. I will speak first of the most celebrated of these two institutions, the HOSPICE GUISLAIN. In the first half of the present century, when men all over the continent of Europe began to think of what could be done for ameliorating the condition of the insane, while the elder TUKE and CONNOLY in ENGLAND and PINEL in FRANCE were doing what they could there, for these unfortunates, there was a man in BELGIUM of great character and breadth of view, with a grand soul a lofty and humane spirit—JOSEPH GUISLAIN, who was at the head of this HOSPICE GUISLAIN at GHENT. He did for Belgium what PINEL did for France, what the elder TUKE and CONNOLY did for England, and he laid the foundation for this hospital, on the new basis or theory upon which the insane were to be treated—by the law of kindness and love, and not by the system of blows, or brutality or driving, or punishment or force. Last year a statue was erected to his memory in the city of GHENT (1887), to which men of almost every nationality contributed, and to which the BELGIAN Government gave a little; the cost made up from many sources. The MEDICO-LEGAL SOCIETY of New York sent twenty francs, and individuals from all over the world sent twenty francs and more; and in July, 1888, in the city of GHENT, a statue was dedicated to the memory of that marvellously good and humane man, who led the movement for ameliorating the condition of the insane of his country, and who placed the practical work on a nobler basis, on a higher status than it had hitherto been.

I particularize what impressed me, as the result of my observations, of the means which have contributed to bring about these results in that country.

I have said that the care of the insane had been origin-

ally given altogether to the religious organizations. BELGIUM is different from all other countries in the world in that respect ; there are no religious organizations in Belgium but Roman Catholics ; there are only 15,000 Protestants and 3,000 Jews ; the whole country is Roman Catholic or almost entirely so. The Romish Church has been, and in some respects is now the custodian, and in its hands are placed the destiny of the insane of that kingdom. At the HOSPICE GUISLAIN, and at TOURNAI, which is the largest and most costly of all the insane asylums, the same system prevails.

At the Hospice at TOURNAI, Dr. Lentz, an eminent alienist of that country, is in charge as Medical Superintendent.

His brother is chairman of the Lunacy Committee of the Belgian Government just formed, and attached to the Attorney General's office at Brussels. The houses are built in the most approved method, and in the most complete and elaborate manner of any institution in the kingdom. The Belgians of Flemish descent speak frequently Flemish, French and English ; those in the Northeast speak Flemish, and others living South speak French. Dr. Lentz was one of the latter. I found he was unable to speak English, but I found an interpreter in his institution in Brother Rudolphe.

There is a religious order of brothers called the Brothers of Sr. VINCENT DE PAUL, a Roman Catholic Society of Brotherhood, who have taken the vows of chastity, poverty and obedience. They form an organization which is very strong, powerful and wealthy. At TOURNAI, where I first stopped, Dr. Lentz told me frankly their relation to the BELGIUM INSANE ASYLUMS. I was introduced to the Brother Superior at TOURNAI, and to the leading members of the order. These brothers

make a contract with the BELGIAN Government, by which they agree to take the whole care, charge and maintenance of the insane, in every respect except medical supervision and attendance. Our physicians will be surprised at this, but it is a fact. DR. LENTZ has very little, almost nothing to do, with the administration of the asylum ; he is simply a medical man, who takes care of the sick, the Medical Superintendent, but the clothing, the food, the care, in every other particular relating to the insane is done by these brothers. When I found this out, I thought best to study the brothers and their management. So I stopped with them, lived with them, ate at their tables and slept in their rooms. Each of these men acts in some capacity ; for instance, one of them is cook, one of them has charge of the farm, superintending the grain, crops, etc. They have lands which they work, and work them just as carefully and thoroughly as any farm is worked in Belgium. They kill their own cattle, they buy nothing from butchers, and they do nearly all their own work of all kinds.

The price the government pays for the taking care of the insane is 96 centimes, not quite one franc per day. The Belgians pay not quite 20 cents per day our money for the care and maintenance of their insane per capitum, exclusive of the expense of the buildings and the salary of the Superintendent. Neither DR. LENTZ at Tournai, nor DR. MOREL at Ghent had any assistant physician, in these splendid establishments, and the salaries were not one quarter what they should be, or like salaries are, in ENGLAND, FRANCE or the UNITED STATES. The patients have good care, have all they want to eat, and are well cared for. Such a thing as abuse of, or cruelty to the the insane, such offences as we have been investigating in New York city (1888), could not be possible in BELGIUM.

There are no hired attendants ; these Christian men devote their lives to this splendid work. I saw a brother nearly ninety years old at the HOSPICE GUISLAIN at GHENT, who had from his childhood been in that service. He was the friend, companion and co worker of GUISLAIN ; he had worked with DR. B. C. INGELS, and won and wore, the decoration of the Legion of Honor on his coarse black gown.

They employ help only in some of the heavy drudgery of the institutions. All the mechanical work is done here in the Hospice. One of the Brothers was at the head of the carpenter's shop ; he was an adept, and could do very fine work ; all the patients, who had done that work were placed there, and some that had no trade ; all repairing was done there. There was another Brother who was a tailor ; another had charge of the floral department. I will say that in no part of the world that I have visited, is there such splendid attention given to flowers and floral effects, and to the gardens, as here. Profusion of flowers abound in the beautiful corridors, built of marble, glass and iron, all cared for by the brothers propagated and grown on the place, so instead of the wards being white, blank and disagreeable, as many of our own are, they were home-like, bright and pleasant, and glorified with beautiful color. Off the wards were gardens enlivened by foliage of plants, shrubs and flowers, and wild fowl of various kinds, which are sometimes considered untamable, were here breeding ; wild quail, and partridge with their young. I do not think they were tame, but there was some system of cutting the bones of their wings, so that they could not fly, and these gardens were accessible to the patients during the day. I saw only one man under restraint at TOURNAI. I went into a ward in company with

Dr. Lentz, I saw this man with a strap over his hands. I said to the brother, "Why do you have that man's hands strapped?" "He is inclined to be violent," he replied. "What will he do?" I asked. "He might do some damage," was the reply. "Please take off the strap, and see what he will do I said, we are all here, you are not afraid of him, and I certainly am not afraid of that little fellow." "Take off the straps and see what the effect will be." When the straps were taken off he looked dazed, hesitated, looked around at the brothers and at us, but was pleased and delighted. There was no apparent reason for his restraint, or rather no good reason. It simply saved trouble in looking after him. Two brothers were in each ward and in charge.

THE HOSPICE GUISLAN.

At the head of that asylum is Dr. JULES MOREL, a most charming man, as Medical Superintendent. He had invited me to dinner and had invited people from Brussels to meet me, besides his wife and some relatives. I was introduced to the Brother Superior there, Brother HILDOUARD, whom I found could speak English very well. Through him I learned more than I could in any other possible way about the relations of the Brothers to the Insane Asylums of Belgium.

HOSPICE GUISLAN is one of the oldest of the asylums of Belgium. It is like a home or great family ; nothing dismal, plenty of light, plenty of air, and such a look as one likes to see. The walls are pierced both ways with apertures so that the patients could look out into the fields ; everywhere GUISLAIN had opened these look-outs through the walls. High walls surround the place, as also at TOURNAI. The whole feeling of the place is free, nice, warm and cheerful. Dr. MOREL was in very

fine relation with the patients. They all seemed to regard him as their best friend. It is a very common thing in asylums in this country, for patients to have the idea that the doctor is an enemy. The doctors in this country frequently find that the patients have a great personal antipathy to them. DR. MOREL seemed to have the most perfect confidence of his patients, whom he could control and handle like so many children. Whether it is the idea of obedience, natural to the people of that country, or whether it is different in this country, because we must know the reason for everything, I do not know ; but in this asylum his word seems to be the law, and the feeling was very different from what we observe so frequently at home in our asylums.

I examined the cuisine, and into the arrangements for the care of the insane, and I fully believe that the Belgian insane are well fed, clothed and cared for ; that they suffer in no way by deprivation from all they ought to have, their food is well cooked and well selected —little of it bought—and a system of gentleness and kindness is maintained in the discipline, care and management. I, who am a Protestant, and not a Catholic, and with little sympathy for their religious views or belief, desire to express the greatest admiration for these Brothers, who devote their lives to this peculiar and beneficent work, and I should be glad if we could imitate such attendance in our American Institutions.

GHEEL.

In the first place, Gheel is a district about twelve miles long, of irregular, triangular shape and width, containing a population of about 11,000 people. That colony has existed for probably more than a thousand years ; we don't know exactly when it was planted. Tradition

tells us that the colony was founded about the year 600 A.D., from an incident which occurred at the death of ST. DYMHNNA ; all are familiar with this tradition—it came to be believed that contact with her relics would cure the insane. The belief arose about a thousand years ago, and they have built a church there and have her bones preserved as relics.

GHEEL became the MECCA towards which men for many centuries sent their demented for relief, and where they have found it in thousands of well authenticated cases. Families lived around this church who make application for the care of the insane, and to them applications have been made from all over the world for centuries. These people have been reared for a thousand years, from father to son, from mother to daughter, trained by long inheritance to take care of the insane, just as a farmer teaches a son to take care of a farm, or as the watchmakers of SWITZERLAND have preserved their art in their families. There are about 5,000 inhabitants in the village of GHEEL, the centre of the colony. No business is done here, no industry of any kind, unless drinking rum is a business. I do not think rum drinking is a specialty at GHEEL. It is a peculiarly popular thing in Belgium universally. If GHEEL escaped, it would be a marvel, if not a miracle, but we must not condemn GHEEL or its system for its rum drinking, which is universal in BELGIUM.

Almost every family that has a home takes charge of these insane people, and they take one, two and three patients and have the whole charge of them—the whole responsibility. They feed them, clothe them, see that that they get up in the morning and go to bed at night. If they require special care they furnish it ; they live simple lives, in the same simple house at Gheel as the

peasant lives in, the same farm house and farm life of Belgium, they live just as the Belgians live. This is not done without medical supervision, and of the best kind.

There is an asylum at Gheel, where there is a superintendent who also has charge of the whole colony. Patients first go into this hospice or asylum, which is under the charge of Dr. Peeters. They are under the observation of the medical superintendent and local board, who, when occasion offers, transfer them into the house of A, B, and C, where they remain as patients, and members of the colony. There are three different prices paid for the patients—eight, nine and twelve cents per day. Twelve cents, English money, is paid for those called the dirty patients, those who are the most troublesome, and who can not take care of themselves. The Government recognizes this by paying the highest price for them. The highest price paid for private patients is \$200 per year. There were 1,800 people in that colony in 1865, and since that there has been 1,600 to 1,800 at a time. Living is very cheap. Everything is on the style of the life of the peasant ; what the peasant does the patient helps to do, and the peasant takes his patient with him, if able to work through the day. The Belgian works often in the night over hours. You see in these great pictures of Millais, women coming home in the evening, or going out to work before the day breaks. Dr. Peeters complained of this to the Government—that the people and the insane often were working too many hours ; he said it was impossible to regulate this ; the Belgian people will work in this way. But is it any worse for the insane than for the people ? I quite agree with the Belgians as to the beneficence and utility of Gheel. All Belgians speak in the highest terms of this colony and in praise of this system, and I believe and concur with them fully.

I never conversed with an alienist in Belgium who had any doubts of the good results of the colony at Gheel. The reason Dr. Tucker found such fault was that he visited the place in December ; it was raining and freezing ; the streets of a country village are not made the same as in great cities. There was a great deal of rain there, and he said he saw the insane crouching around their miserable fires, which any one would do under similar circumstances. But I think the insane there are just as happy and are as well cared for, fed and clad as are the people of Belgium of the same class. I persuaded Brother Hildouard to accompany me on my visit to GHEEL and I am under great obligations to him for showing me much of the work there, that without him I could not have seen or at all understood.

The Belgians are a well-to-do people who live frugally, and who live as the Holland Dutch formerly did, from whom our most aristocratic New York City families come. The grandmothers of our Knickerbocker aristocrats took care of the kettle, fed the pigs and cows, precisely as the women of the Netherlands do now, and this is how they get their peculiar appearance, which characterizes physically the Knickerbocker Dutch here, who are of the same type in our city, as in Belgium, and look exactly like their New York descendants in many respects.

We have in the State of New York six large State institutions for the insane—Utica, Auburn, Middletown, Willard, Binghamton and Buffalo. Recently the question came up of building another asylum in the North, and it takes a million of dollars to do this. We have only our proportion of population, five millions and a half. What is the use of building so many asylums, with the example of this colony at Gheel before us ? And why should we not consider how many of our insane could be trans-

ferred into families, upon farms, where they can have out door exercise, labor, and occupation combined with it ?

I asked Dr. Blumer, the present superintendent at Utica, what proportion of his patients could be so placed without danger to others or themselves ; he said about 70 per cent. of his patients could be so removed with safety, so far as any probable damage would be done to themselves or others. I think he was correct, and I think other American superintendents, if questioned, would give similar answers. Massachusetts has passed laws allowing the experiment to be made in that State, authorizing the authorities to place insane in families who would take care of them under proper supervision for a fixed price. If people are willing to take them, let them have them. I would not think of putting an insane person with a farmer, or with any one without medical supervision.

There is a feeling among the insane, confined in asylums, which stands in the way of recovery ; that feeling which a man has, that he cannot get beyond a certain boundary line—that he is a prisoner. He hears the rattle of keys and clang of bolts and bars ; this agitates and excites him, and retards recovery.

I believe there has been only one case of crime by the insane in Gheel in 11 years, only three or four illegitimate births, and only one case ascribable to a lunatic ; there has been only one offence against the public peace in 10 years, and there has been no crime among them anything like the percentage of crime in the United States. These things ought to be regarded. We should consider them. Ought we not to make the experiment, even if we have asylums ? Take for instance, the case of a harmless, demented old lady, afflicted in a certain way, chronic, incurable, but harmless, why keep her in

an asylum, if she could be made happy and comfortable on a farm at less expense?

The relation of the religious orders to the insane in Belgium is peculiar and phenomenal. In 1886, the latest statistics accessible to me, there was a great number of religious houses in Belgium whose inmates spend their lives in pious work. In that year there were in Belgium, 178 of these houses for males, and 8,144 for females. The population of the former was then 2,991, and the latter 15,205. In many of the Belgium asylums these women have the insane in charge.

I find it very difficult to give an estimate of the actual number of the insane in Belgium and their disposition at this time. The latest official reports of Belgium furnished me by Dr. Lentz, Director-General of the Department of Justice, and now Inspector of Insane Asylums of Belgium, whom I met in Brussels in 1857, were published in 1881, and were to 1880.

The Bulletin of the Society of Mental Medecine of Belgium for 1886 (3 fascicule No. 42, pp. 104 and 105), furnish a tabular statement which I append as doubtless reliable at that time:

INSANE ASYLUMS OF BELGIUM (1885)

NAMES OF ASYLUMS.	LOCATIONS.	NAMES OF DIRECTORS.	NAMES OF DIRECTORS.	MEDICAL SUPERINTENDENTS.	VISITING COMMITTEE.	POPULATION.	
						Board's.	Poor.
						Females.	Males.
Hospices des Aliences.	Antwerp.	Van Genetlen.		Berchem.	Kuus.	96.	30.
" " Freres Cellites.	Bonchot.	Van Thielien.		Van Hoof.	90.	80.	...
Establishment d'Aliences.	Duffel.			De Ridder.	80.	30.	...
" " des Freres Cellites.	Malines.	Thomassen.		Stommelmaier.	30.	30.	...
Insane Colony.	Ghool.			Peeters.	175.	125.	800.
" "				Med. Inspector.			900.
				Aerts.			
				Huygens.			
Establishment (Hospices St. Jean) des Aliences.	Lierneux.	Hakfn.		Desnoel (Med. Dep't.)			
" "	Brussels.	Mascart.		Desnoel, J.			
" "	Uccle.	Irynebrecq.		Goffin.	75.	60.	15.
" "	Evere.			Caylifts.	30.	34.	94.
" "	Schaerbeek.			Tourinck.	18.	20.	...
" "	Louvain.			Masoin.	40.	30.	...
" "	Diest.			De Smit.	40.	40.	30.
" "				Konens.	40.	40.	...
" "				Dingenen.	75.	40.	...
" "				Lukermann.	130.	21.	280.
" "				De Vested.	Vrebos.		
" "				Soleil.	Valeke.		
" "				Houtave.	Vanden Aberle.		
" "	St. Dominique.	Bruges.		Mehn.	Lienart.		
" "	St. Julian.			Ypres.	Lefebvre.	25.	420.
" "	des Aliences.			Gand.	Cornette.	95.	66.
" "					Vermeulen.	6.	4.
" "	Strop.					Morel.	90.
" "	Rue d'Assant.						270.
" "	Court R. d'la Violette.						

INSANE ASYLUMS OF BELGIUM (1885.)—Continued.

NAMES OF ASYLUMS.	LOCATION.	NAMES OF DIRECTORS.	NAMES OF DIRECTORS.	MEDICAL SUPERINTENDENTS.	VISITING COMMITTEE.	POPULATION.		
						Board's Females.	Poor. Males.	Females.
						Males.	Females.	Males.
Hospice Gnislain	Grand.	Van Langendorck	.....	De Moerloose	.....	14	480	...
Establishment Freres St. Jean de Dieu	"	.....	.....	De Graene	.....	400	...	...
des Alienees.	St. Andrez...	Baelen	.....	Mabilde	.....	60	60	300
"	Courtrai...	.....	.....	.....	.....	400	...	...
"	Sezzate...	Van Vyncht	.....	Authemis	.....	25	60	...
"	"	.....	.....	.....	.....	60	...	...
"	St. Nieolas...	Vanden Brent	.....	Kraes	.....	60	90	...
"	"	.....	.....	Peeters	.....	60	...	60
"	Leude...	.....	.....	Berens	.....	50	...	5
"	Yelsegne	.....	.....	Droesbeque	.....	10	...	45
"	Brulowarde.	.....	.....	Sebrecths	.....	22	...	...
"	Tournai...	.....	.....	Du Coster	.....	10	...	...
"	Wez-Velvain	.....	.....	Leclercq	.....	74	435	...
"	Chinyayres...	.....	.....	Paeuy	.....	91	...	405
"	Tournai...	.....	.....	Demitz, Med. Dir.	.....	20	...	...
"	a de l'Etat...	.....	.....	Semai,	.....	130	...	...
"	"	.....	.....	Decocket	.....	100	...	...
"	" (males)...	Liege...	Pres des Hospice	Closset	.....	70	40	...
Asile St. Agathe...	"	.....	.....	Anten	.....	30	...	...
des Alienees	.....	Candizee	.....	Dehaesque.	.....	100	...	...
"	Glain...	.....	.....	De Bruyn	.....	100	350	200
"	Henri-	.....	.....	Gomblant	.....	50	...	...
"	Chanelle...	.....	.....	Grosse...	.....	...	...	...
St. Trond...	"	.....	.....	.....	.....	...	...	...
Establishment des Alienees.	"	.....	.....	.....	.....	...	...	...

This table was made by M. Oudert, late General Superintendent of the State Institution of Belgium for 1885.

Dr. Peeters Medical Superintendent of the Colony and Asylum at Gheel, published in the same journal (No. 41, 2 fascicule pp. 18, *et seq.*), the population of that colony for 1884 and 1885 as follows:

December 31, 1884, number of insane, 1727
 " 31, 1885, " " " 1581,

having sent some in the latter year to the new colony at Liernieu—*and to other institutions*—and made the following general summary for December 31, 1885, at GHEEL:

	MEN.	WOMEN.		MEN.	WOMEN.
Boarders....	95	46	Curable.....	12	20
Poor.....	684	755	Incurables...	7 8	781
	<hr/> 780	<hr/> 801		<hr/> 780	<hr/> 801

1. The insane in the United States, based in compilations from the tenth census showing the ratio, and per cent. of each State and Territory to population:

2. Total insane in the United States in 1880:

In asylums.....	40,942
Out of asylums.....	51,055
Total.....	91,977 excluding idiots.

GENERAL RATIO.

Male, 17 per cent.	White, 19 per cent.
Female, 19 per cent.	Native, 15 per cent.
Colored, 9 per cent.	Foreign, 39 per cent.
	Total, 18 per cent.

Also the insane in United States, based on the tenth census, in the ratio to population.

RANK.	STATE.	PER CENT
1	District of Columbia.....	.52
2.....	Vermont.....	.30
3.....	New Hampshire.....	.30
4.....	California.....	.28
5.....	Massachusetts.....	.28
6.....	New York.....	.27
7.....	Connecticut.....	.27
8.....	Rhode Island.....	.24
9.....	Maine.....	.23
10.....	Ohio.....	.22
11.....	Oregon.....	.21
12.....	New Jersey.....	.21

RANK.	STATE.	PER CENT.
13.	Missouri.	19
14.	Pennsylvania.	19
15.	Wisconsin.	19
16.	Washington.	17
17.	Indiana.	17
18.	Michigan.	17
19.	Kentucky.	16
20.	Illinois.	16
21.	Virginia.	15
22.	West Virginia.	15
23m.	Iowa.	15
24.	Missouri.	15
25.	Tennessee.	15
26.	Montana.	15
27.	Minnesota.	14
28.	North Carolina.	14
29.	Delaware.	13
30.	New Mexico.	12
31.	Alabama.	12
32.	South Carolina.	11
33.	Georgia.	11
34.	Louisiania.	10
35.	Utah.	10
36.	Mississippi.	10
37.	Kansas.	10
38.	Nebraska.	9
39.	Arkansas.	9
40.	Texas.	9
41.	Florida.	9
42.	Dakota.	5
43.	Arizona.	5
44.	Colorado.	5
45.	Nebraska.	4
46.	Idaho.	4
47.	Wyoming.	1
Total insane in United States.		91,997
In asylums.		40,942
Out of asylums.		51,055
1880		
Insane.		91,977
Idiotic.		76,895
Blind.		48,928
Deaf Mutes.		33,878
251,698		

NOTE.—I wrote to Dr. Jules Morel for later data, who was unable to send me official reports, which he expected next year (1889), from 1880 to 1886. If published I have not seen them.

In compliance with my request, Dr. Jules Morel sent me the following table under date of August 12, 1888, which may prove of interest.

TABLE OF INSANE ASYLUMS OF BELGIUM, COMPILED BY
 DR. JULES MOREL, MEDICAL SUPERINTENDENT
 OF HOSPICE GUISLAIN, AT GHENT,
 AUGUST 12th, 1888.

LUNATIC ASYLUMS, LOCATION.	SUPERINTEND' TS.	INMATES.			PUBLIC OR PRIVATE.	
		Boarders		Poor.		
		Male.	Female.	Male.	Female.	
Hospice Guislain, Ghent.	Dr. Morel	20	.....	474	...	Public.
Rue Court des Violettes, “	Dr. Vermeulen .....	.....	.....	270	.....	Public.
Rue d'Oessant, Ghent....	Dr. Vermeulen	90	.....	.....	.....	Private.
“ Le Strop “	Dr. Vermeulen	90	.....	.....	.....	Private.
St. Jean de Dieu, “	Dr. De Moerlonne	14	.....	.....	.....	Private.
Asylum at Courtrai.....	Dr. De Craene	60	60	150	300	Public.
Selzate.....	Dr. Mabilde .....	.....	.....	400	.....	Public.
St. Nicolos. ..	Dr. Authennis	60	.....	.....	90	Public.
“ “	Dr. Authennis	25	.....	60	.....	Public.
St. Lede.....	Dr. Wibo .....	.....	60	.....	60	Public.
Velscque.....	Dr. Piens .....	.....	5	.....	50	Public.
Tournai	Dr. F. Lentz	70	.....	600	.....	Public.
Tournai	Dr. Duhem .....	.....	10	.....	45	Public.
Wez Velvain	Dr. Dulheen .....	.....	32	.....	.....	Private.
Chiéores	Dr. Le Clercq .....	.....	10	.....	.....	Private.
Mons	Dr. Semal .....	.....	94	.....	405	Public.
Liege	Dr. Auten .....	.....	.....	.....	100	Public.
Liege	Dr. Clossett	20	.....	140	.....	Public.
Glain	Dr. Auten .....	.....	70	.....	40	Private.
Henri-Chapelle	Dr. Henfling	30	.....	.....	.....	Private.
St. Trond	Dr. De Bruyn	100	.....	350	.....	Public.
“ “	Dr. De Bruyn	50	.....	200	.....	Public.
Loreken	Dr. Vanneste .....	.....	.....	.....	27	Public.

NOTE.—This table must not be taken to be complete for Belgium, as some asylums are omitted, as at Antwerp, Malines, Louvain, Alost, Menin, Bruges, Evere, Erp, Quebs, the Colonies at Gheel and Liernieux, and others, but it is undoubtedly reliable as far as it gives names and inmates.

V

ELECTRICITY AND THE DEATH PENALTY.

By CLARK BELL, Esq.,

President of the Medico-Legal Society of New York.

THREE has been for more than a quarter of a century in this State a prejudice against the scaffold and the hangman.

Those who have yielded to the stern exactions of the law, which demands "a life for a life," have felt an almost insurmountable repugnance to the rope.

The bungling of sheriffs' assistants, the negligent or ignorant adjustment of the noose, have often caused such revolting scenes at public executions as to fill beholders with horror; and add to that ever increasing number, now close to a majority, who demand the entire abolition of the death penalty as a punishment for crime.

The removal of the scaffold as a factor in the civilization of our century has engaged the attention of the Medico-Legal Society for many years.

The first introduction of the subject before that body was the paper of the eminent French scientist Ambrose Tardieu, entitled "Diagnosis of Hanging" (Medico-Legal Papers, Series 3, p. 40).

The late Dr. Alonzo Calkins read a paper before that Society, in September, 1873, entitled "Felonious Homicide; its Penalty, and the Execution Thereof Judicially," advocating the abolition of death by hanging, and discussing various methods as desirable substitutes (Medico-Legal Papers, Series 3, p. 250).

The discussion was renewed before the Society by Prof. J. H. Packard, of Philadelphia, who strongly urged the abolition of the hangman's rope and recommended as the most desirable substitute, death by inhalation of sulphuric oxide gas (Medico-Legal Papers, Series 3, p. 521).

THE EXECUTIVE COMMITTEE OF THE MEDICO-LEGAL SOCIETY.



ROGER FOSTER, Esq.
DR. FRED. PETERSON.
DR. CHAS. F. STILLMAN.
MORITZ ELLINGER.

DR. FRED. PETERSON.
ALBERT BACH, Esq.
W. M. G. DAVIES, Esq.

W. W. GODDING, M. D.
W. G. STEVENSON, M. D.
CLARK BELL, Esq.

DR. CHAS. MILNE.
PROF. R. O. DOREMUS.
E. W. CHAMBERLAIN, Esq.

DR. FRANK H. INGRAM.
DR. J. MOUNT BLEWER.
DR. R. B. KIMBALL, Esq.

DR. FERNANDO C. VALENTINE.

The whole subject was again brought before the Medico-Legal Society in February, 1888, by Dr. J. Mount Bleyer, in a paper entitled "Best Methods of Capital Punishment" (*Medico-Legal Journal*, Vol V., p. 424).

The Legislature of the State, upon the recommendation of Governor Hill, in his messages of 1885 and 1886, named a commission to examine the subject and report their conclusions, composed of Hon. Elbridge T. Gerry, a member of the Medico-Legal Society; Mathew Hale, Esq., of the Albany bar; and Dr. Alfred P. Southwick, of Buffalo.

On January 17th, 1888, this Committee submitted their report to the Legislature of New York. It is a very exhaustive and elaborate document, too long for insertion here. It gives the history of human punishments for crimes in earliest times and in all countries.

It enumerates and describes thirty-four different methods in which the death penalty has been hitherto inflicted.

The guillotine is in vogue in nineteen civilized countries; the sword in nineteen; the gallows in three; the ax in one; the cord in one, while executions are public in twenty-nine countries and private in seven.

The Committee claim and enumerate the following, as facts demonstrated by their inquiry:

1. That the effort to diminish the increase of crime by the indiscriminate application of capital punishment to various offences involving different grades of moral turpitude, or, in other words, by enlarging the number of capital offences, has proved a failure.

2. That any undue or peculiar severity in the mode of inflicting the death penalty, neither operates to lessen the occurrence of the offence nor to produce a deterrent effect.

3. That from the long catalogue of various methods of punishment adopted by various nations at different times, only five are now practically resorted to by the civilized world. These five are: 1, The guillotine; 2, The garrote; 3, Shooting; 4, The sword; 5, The gallows.

In recommending a change from the present barbarous and inhuman system of hanging, four substitutes are considered: 1, Electricity; 2, Prussic Acid or other poison; 3, Guillotine; 4, Garrote.

This Committee do not seem to have considered the proposal made by Prof. Packard, of a painless death by inhaling sulphuric oxide gas in a small room in each jail, nor the lethal chamber suggested by Dr. B. Ward Richardson, of London; and they discard the use of the hypodermic injection of prussic acid or other deadly poison, as "hardly advisable because against the almost universal protest of the medical profession."

Their conclusions, after a careful, thorough, very able and exhaustive examination of the whole subject, are as follows:

1. That death produced by a sufficiently powerful electric current is the most rapid and humane produced by any agent at our command.
2. That resuscitation after the passage of such a current through the body and functional centers of the brain is impossible.
3. That the apparatus to be used should be managed to permit the current to pass through the centers of function and intelligence in the brain.

The commission suggested other considerations of great public interest, which may be stated as propositions:

(1). That the State, by the present universal sentiment of mankind, can only justify itself in taking human life as a punishment for violation of laws; inflicting the death penalty, where necessary, for the safety of society and to deter others from the commission of crime.

(2.) That the State has not the right to torture the criminal, nor to inflict any punishment whatever in any vindictive spirit or by way of retaliation for the crime.

The committee submitted a draft of a bill and recommend:

- (a.) That executions should be private.

(b.) That the details of the execution should not be furnished to the public press; and,

(c.) That the bodies should be delivered to medical schools for dissection in aid of science, or be buried in the prison yard.

The idea for punishment for crime has colored all human laws.

Such legislation has been called *punitive* for centuries.

These statutes are denominated *penal* in all the codes.

It is a little more than half a century since hanging was the penalty in England for more than one hundred statutory offences, many of which are now regarded as trivial.

Nearly all of these are abolished; but we still call the measure of punishment *penalties*, and we even say "the death penalty" when we discuss it, and use the term "*capital punishment*" for judicial killing.

The report of the Legislative Commission, considered in its broadest and ablest aspect, outside the abolition of hanging and substituting the electric current, lies in claiming that the universal public judgment and opinion of mankind should be recognized by the law-making power, declaring:

That the penalty for the violations of the law in what are called "capital cases" should not hereafter be regarded or treated as *punitory*.

That the State does not claim the right of inflicting any punishment upon the homicide in a vindictive or retaliatory sense, or in any degree or view as "punitory" or compensatory for the act committed.

That beyond the protection of society, the rights of men and what is called the "deterrent effect" of human punishment, the State has neither the right nor wish to go.

The Medico-Legal Society, by a committee appointed February, 1888, duly considered the whole subject, and the report of that committee was made to the body at the

March meeting, 1888, unanimously adopted by the Society, and transmitted to the Legislature. The report was prepared by myself and met the approval of the entire committee and was as follows:

REPORT OF THE COMMITTEE ON BEST METHODS OF EXECUTING CRIMINALS.

To the Medico-Legal Society.

The Committee to whom was referred the subject of The Best Method of Executing the Death Penalty, respectfully report:

That in the consideration of this subject they have considered the several papers read before the Medico-Legal Society by Ambrose Tardieu; Dr. Alonzo Calkins; Prof. J. H. Packard, of Philadelphia; Dr. J. Mount Bleyer; and the report of Hon. Elbridge T. Gerry; Alfred P. Southwick, M. D., and Mathew Hale, Esq., Commissioners, made to the Legislature on January 17, 1888, which were, by action of this Society, laid before this Committee at the February meeting.

Your Committee are of the opinion that the Commissioners are entitled to the thanks of the Legislature and the public, for the able and exhaustive labor they have bestowed upon the subject. Your Committee are of the opinion:

1. That the reduction in number by legislation among civilized States, of what are designated as capital offences, is in accord with enlightened civilization, and that its practical result has been the diminution, rather than the increase of crime.

2. That it should be legally established by legislative enactments, that the State, in fixing penalties for crimes, has no right to inflict a vindictive punishment upon a criminal, in any spirit of vengeance or retaliation. That the object and justification of punishment should be to deter others from the commission of crime.

3. That the provisions of our Constitution "that cruel and unusual punishments shall not be inflicted" should be enforced by appropriate legislation, and all existing statutes repugnant to either its letter or spirit be repealed.

4. That hanging should be abolished as cruel and contrary to the public sense of our civilization.

5. That as a substitute for the present death penalty we would recommend:

(1.) Death by the electric current, or—

(2.) Death by hypodermic or other injection of poison, or—

(3.) Death by carbonic oxide gas injected into a small room in each jail, as recommended by Prof. John H. Packard (Med.-Leg. Papers, Vol. III., p. 521), giving our preference to the first, or death by electric current.

6. That in our judgment executions should be private and not public.

7. That if it were possible to prevent the publication of details of executions in the public press, it would be a public good.

8. That the bodies of criminals should be delivered to the medical schools, after execution, for dissection.

Your Committee do not pass upon the question of the propriety of inflicting capital punishment by the State, against which there is strong objection in the popular mind.

The report is intended to be limited to the subjects embraced in the report now before the Legislature of the State and the papers read before this Society.

R. OGDEN DOREMUS,
CLARK BELL,
J. MOUNT BLEYER, M. D.,
CHAS. F. STILLMAN, M. D.,
FRANK H. INGRAM, M. D.,
Committee.

The Legislature of New York passed the following law, which received the approval of Governor Hill:

LAWS OF NEW YORK.—By Authority.

[Every law, unless a different time shall be prescribed therein, shall commence and take effect throughout the State, on and not before the twentieth day after the day of its final passage, as certified by the Secretary of State. Sec. 12, title 4, chap. 7, part 1, Revised Statutes.]

CHAP. 489.

AN ACT to amend sections four hundred and ninety-one, four hundred and nine-two, five hundred and three, five hundred and four, five hundred and five, five hundred and six, five hundred and seven, five hundred and eight and five hundred and nine of the Code of Criminal Procedure, relative to the infliction of the death penalty, and to provide means for the infliction of such penalty.

Approved by the Governor June 4, 1888. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. Section four hundred and ninety-one of the Code of Criminal Procedure of the State of New York is hereby amended so as to read as follows:

§ 491. When a defendant is sentenced to the punishment of death, the judge or judges holding the court at which the conviction takes place, or a majority of them, of whom the judge presiding must be one, must make out, sign and deliver to the sheriff of the county, a warrant stating the conviction and sentence and appointing the week within which sentence must be executed. Said warrant must be directed to the Agent and Warden of the State prison of this State designated by law as the place of confinement for convicts sentenced

to imprisonment in a State prison in the judicial district wherein such conviction has taken place, commanding such Agent and Warden to do execution of the sentence upon some day within the week thus appointed. Within ten days after the issuing of such warrant, the said sheriff must deliver the defendant, together with the warrant, to the Agent and Warden of the State prison therein named. From the time of said delivery to the said Agent and Warden until the infliction of the punishment of death upon him, unless he shall be lawfully discharged from such imprisonment, the defendant shall be kept in solitary confinement at said State prison, and no person shall be allowed access to him without an order of the court, except the officers of the prison, his counsel, his physician, a priest or minister of religion, if he shall desire one, and the members of his family.

§ 2. Section four hundred and ninety-two of said Code of Criminal Procedure is hereby amended so as to read as follows:

§ 492. The week so appointed must begin not less than four weeks and not more than eight weeks after the sentence. The time of the execution within said week shall be left to the discretion of the Agent and Warden to whom the Warrant is directed; but no previous announcement of the day or hour of the execution shall be made, except to the persons who shall be invited or permitted to be present at said execution as hereinafter provided.

§ 3. Section five hundred and three of said Code of Criminal Procedure is hereby amended to read as follows:

§ 503. Whenever, for any reason other than insanity or pregnancy, a defendant sentenced to the punishment of death has not been executed pursuant to the sentence, at the time specified thereby, and the sentence or judgment inflicting the punishment stands in full force, the Court of Appeals or a judge thereof or the Supreme Court or a justice thereof, upon application by the Attorney-General or of the district attorney of the county where the conviction was had, must make an order directed to the Agent and Warden or other officer in whose custody said defendant may be, commanding him to bring the convict before the Court of Appeals or a general term of the Supreme Court in the department, or a term of the Court of Oyer and Terminer in the county where the conviction was had. If the defendant be at large, a warrant may be issued by the Court of Appeals or a judge thereof, or by the Supreme Court or a justice thereof, directing any sheriff or other officer, to bring the defendant before the Court of Appeals or the Supreme Court at a general term thereof, or before a term of the Court of Oyer and Terminer in that county.

§ 4. Section five hundred and four of said Code of Criminal Procedure is hereby amended so as to read as follows:

§ 504. Upon the defendant being brought before the court, it must inquire into the circumstances, and if no legal reason exists against the execution of the sentence, it must issue its warrant to the Agent and Warden of the State prison mentioned in the original warrant and sentence, under the hands of the judge or judges, or a majority of them, of whom the judge presiding must be one, commanding the said

Agent and Warden to do execution of the sentence during the week appointed therein. The warrant must be obeyed by the Agent and Warden accordingly. The time of the execution within said week shall be left to the discretion of the Agent and Warden to whom the warrant is directed; but no previous announcement of the day or hour of the execution shall be made, except to the persons who shall be invited or permitted to be present at said execution as hereinafter provided.

§ 5. Section five hundred and five of said Code of Criminal Procedure is hereby amended so as to read as follows:

§ 505. The punishment of death must, in every case, be inflicted by causing to pass through the body of the convict a current of electricity of sufficient intensity to cause death, and the application of such current must be continued until such convict is dead.

§ 6. Section five hundred and six of said Code of Criminal Procedure is hereby amended so as to read as follows:

§ 506. The punishment of death must be inflicted within the walls of the State prison designated in the warrant, or within the yard or inclosure adjoining thereto.

§ 7. Section five hundred and seven of said Code of Criminal Procedure is hereby amended so as to read as follows:

§ 507. It is the duty of the Agent and Warden to be present at the execution, and to invite the presence, by at least three days' previous notice, of a justice of the Supreme Court, the district attorney, and the sheriff of the county wherein the conviction was had, together with two physicians and twelve reputable citizens of full age, to be selected by said Agent and Warden. Such Agent and Warden must, at the request of the criminal, permit such ministers of the gospel, priests or clergymen of any religious denomination, not exceeding two, to be present at the execution; and, in addition to the persons designated above, he may also appoint seven assistants or deputy sheriffs who may attend the execution. He shall permit no other person to be present at such execution except those designated in this section. Immediately after the execution a *post mortem* examination of the body of the convict shall be made by the physicians present at the execution, and their report in writing, stating the nature of the examination, so made by them, shall be annexed to the certificate hereinafter mentioned and filed therewith. After such *post mortem* examination the body, unless claimed by some relative or relatives of the person so executed, shall be interred in the graveyard or cemetery attached to the prison, with a sufficient quantity of quick-lime to consume such body without delay; and no religious or other services shall be held over the remains after such execution, except within the walls of the prison where said execution took place, and only in the presence of the officers of said prison, the person conducting said services and the immediate family and relatives of said deceased prisoner. No account of the details of any such execution, beyond the statement of the fact that such convict was on the day in question duly executed according to law at the prison shall be published in any newspaper.

Any person who shall violate or omit to comply with any provision of this section shall be guilty of a misdemeanor.

§ 8. Section five hundred and eight of said Code of Criminal Procedure is hereby amended so as to read as follows:

§ 508. The Agent and Warden attending the execution must prepare and sign a certificate setting forth the time and place thereof, and that the convict was then and there executed, in conformity to the sentence of the court and the provisions of this Code, and must procure such certificate to be signed by all the persons present and witnessing the execution. He must cause the certificate, together with the certificate of the *post-mortem* examination mentioned in the preceding section, and annexed thereto, to be filed within ten days after the execution in the office of the Clerk of the county in which the conviction was had.

§ 9. Section five hundred and nine of said Code of Criminal Procedure is hereby amended so as to read as follows:

§ 509. In case of the disability, from illness or other sufficient cause, of the Agent and Warden to whom the death warrant is directed to be present and execute said warrant, it shall be the duty of the principal keeper of said prison, or such officer of said prison as may be designated by the Superintendent of State Prisons, to execute the said warrant and to perform all the other duties by this act imposed upon said Agent and Warden.

§ 10. Nothing contained in any provision of this act applies to a crime committed at any time before the day when this act takes effect. Such crime must be punished according to the provisions of law existing when it is committed, in the same manner as if this act had not been passed; and the provisions of law for the infliction of the penalty of death upon convicted criminals, in existence on the day prior to the passage of this act, are continued in existence and applicable to all crimes punishable by death, which have been or may be committed before the time when this act takes effect. A crime punishable by death committed after the beginning of the day when this act takes effect, must be punished according to the provision of this act and not otherwise.

§ 11. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

§ 12. This act shall take effect on the first day of January, one thousand eight hundred and eighty-nine, and shall apply to all convictions for crimes punishable by death committed on or after that date.

STATE OF NEW YORK, }
OFFICE OF THE SECRETARY OF STATE, } ss.

I have compared the preceding with the original law on file in this office, and do hereby certify that the same is a correct transcript therefrom and of the whole of said original law.

FREDERICK COOK,
Secretary of State.

This statute going into effect January 1, 1889, the writer felt it the duty of the body to consider, for the benefit of public officials, "what was the best method of carrying the same into effect," and recommended to the Society the appointment of a committee to consider this subject and report.

A preliminary report was made by this committee, at the November meeting, 1888, which was laid over for discussion to the December meeting, 1888.

That Committee there made a detailed report which was, after discussion, unanimously adopted by the body.

The report is as follows:

REPORT OF THE COMMITTEE OF THE MEDICO-LEGAL SOCIETY ON THE
BEST METHOD OF EXECUTION OF CRIMINALS
BY ELECTRICITY.

Introductory.—In the six weeks that have elapsed since the preparation of our original report to the Society we have made further valuable experiments, and although our report had not as yet been officially printed, we have received so many useful suggestions and criticisms upon such portions as had been given to the public in the press—both through correspondents and through discussions in various papers and journals—that we are enabled to present at this meeting a fuller and more explicit expression of our opinions. The additional light thrown upon a difficult problem has permitted us to make a few slight alterations in our earlier report, and to subjoin an appendix for the better elucidation of the subject.

THE REPORT.

To the President and Members of the Medico-Legal Society :

Your Committee appointed at the September meeting to consider and advise upon the proper method of executing criminals by electricity, reports as follows:

The law recently passed by the Legislature of the State of New York, providing for the administration of capital punishment by electricity, goes into effect January 1st, 1889. All murderers sentenced to death for crimes committed on or after that date are to die by this means. As the use of electricity is an entirely novel method of putting to death human individuals, the manner of the application of the lethal current requires some thoughtful care and study.

The Commission appointed by the Governor to examine into various methods of causing death, which should be more humane than hanging, decided upon electricity. This Commission caused certain experiments

to be carried out upon dogs, by which it was proven that electricity will produce certain and instantaneous death. In these experiments the animals were placed in a zinc-lined box half filled with water connected with one pole, while the other pole, in the shape of a wire, was wound around the nose or inserted into the mouth. There are no data as to the amount or kind of electricity employed. This method, although successful, is hardly applicable to a human being.

Some experiments were conducted by one of our Committee (Dr. J. Mount Bleyer), and reported in the *Humboldt Scientific Library*, March, 1887; and during the past summer a series of thirty or more careful experiments were made upon dogs with death currents, at the Edison Laboratory, in New Jersey, by Messrs. Harold P. Brown and A. E. Kennelly and the chairman of this Committee (Dr. Frederick Peterson) all of which are of particular value to us in suggesting the proper method of executing criminals by electricity. These last were published in detail in the *Electrical World*, August 8th, 1888, and from them we have ascertained the following points:

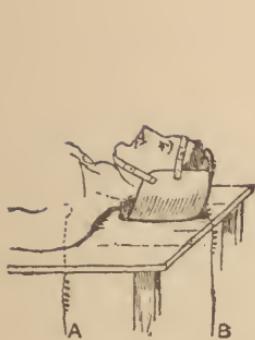
The resistance of these dogs was measured and found to vary from 3,600 to 200,000 ohms, depending upon the differing thicknesses of skin and hair, and the amount of moisture between the skin and the electrodes. The amount of electro-motive force was also accurately determined, and it was found that with the alternating current, as low as 160 volts was sufficient to kill a dog, and that with the continuous current a much higher voltage was necessary for the production of a fatal effect.

There are several points requiring thoughtful consideration in the application of death currents to man which we now proceed to lay before you.

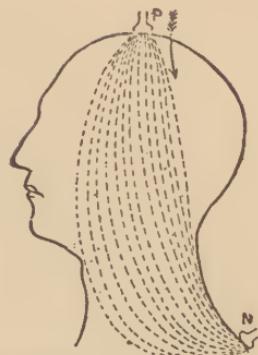
The average resistance of the human body is about 2,500 ohms. The most of this resistance is in the skin. It is evident, therefore, that the larger the surface of the electrode applied to the body the less will be the resistance. But it is also a fact that the density of the current depends upon the superficial area of the electrode. With a pole of small diameter the passing current will be more dense than when an electrode of large sectional area is applied.

We think that immersion of the body in a large quantity of water to act as one pole, or the placing of large metal plates upon any part of the body, should be put entirely out of consideration. It is further well known that, if metal be directly in contact with the skin during the passage of an electric current, burns and lacerations are apt to be produced.

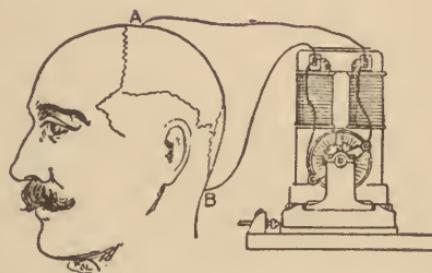
We believe that all means hitherto suggested are open to criticism upon these grounds. The posture of the criminal requires also some discussion at our hands. We think there are serious objections to the employment of any apparatus in which the prisoner takes a standing position. There are so many histories of unseemly struggles and contortions on the part of criminals executed by the old methods, that the necessity of some bodily restraint is evident. Furthermore, the possibility of a tetanic contraction of the body from the shock of the current is to be borne in mind. In our opinion the recumbent or the sitting position is best adapted to our purpose.



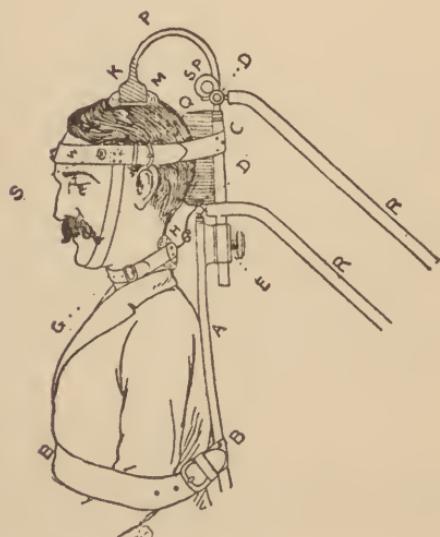
1. THE RECLINING TABLE.



2. THE HELMET AND ACTION OF THE CURRENT.



3. SHOWING THE ACTION THROUGH THE BRAIN.



4. THE APPLICATION OF THE CURRENT THROUGH THE BRAIN.

Another question of importance is to which part of the body the two poles should be applied. There can be no doubt that one electrode should be in contact with the head. The other might be placed upon any portion of the body, upon the trunk or extremities, but there are obvious reasons why the neighborhood of the spinal cord would be more advantageous. The electric current, in passing through the body from one pole to another, undergoes more or less diffusion through the tissues. A current passing from the top of the head to the small of the back will be diffused throughout a great part of the brain, and all of the tissues of the neck. The medulla oblongata—a part of the brain which is the most vital—together with all the nerves of the neck and the spinal cord, which exercise jurisdiction over the lungs and heart, will be thoroughly permeated by the current applied in this way. As the seat of consciousness is in the brain, and particularly in the cortex of the cerebrum, it is clear that this faculty of the mind will suffer at once, if the current be sufficiently strong. The electric stream flows from the positive to the negative pole, and there might be some possible advantage in placing the positive pole on the vertex of the head, nearest the center of consciousness, although death in any case will be instantaneous.

After mature deliberation we recommend that the death current be administered to the criminal in the following manner:

A stout table covered with rubber cloth and having holes along its borders for binding, or a strong chair should be procured. The prisoner lying on his back, or sitting, should be firmly bound on this table, or in the chair. One electrode should be so inserted into the table, or into the back of the chair, that it will impinge upon the spine between the shoulders. The head should be secured by means of a sort of helmet fastened to the table or back of chair, and to this helmet the other pole should be so joined as to press firmly with its end upon the top of the head. We think a chair is preferable to a table. The rheophores can be led off to the dynamo through the floor or to another room, and the instrument for closing the circuit can be attached to the wall.

The electrodes should be of metal, between one and four inches in diameter, covered with a thick layer of sponge or chamois skin.

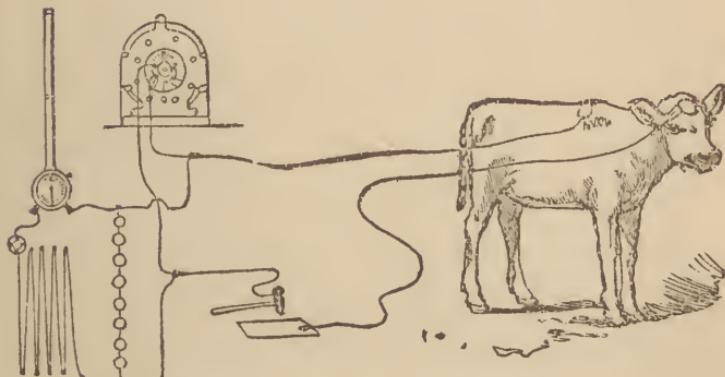
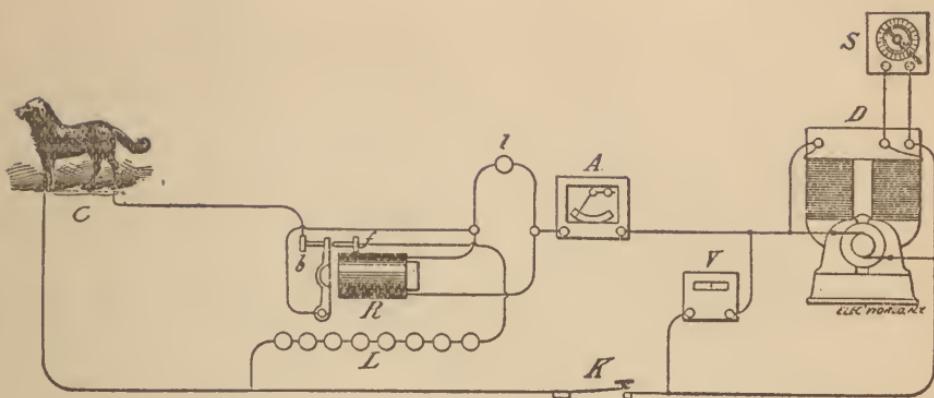
The poles and the skin and hair at the points of contact should be thoroughly wet with a warm aqueous solution of common salt. The hair should be cut short. Provision should be made for preventing any moisture reaching from one electrode to the other.

A dynamo capable of generating an electro-motive force of at least 3,000 volts should be employed, and a current used with a potential between 1,000 and 1,500 volts, according to the resistance of the criminal.

The alternating current should be made use of, with alternations not fewer than 300 per second. Such a current allowed to pass for from fifteen to thirty seconds will insure death.

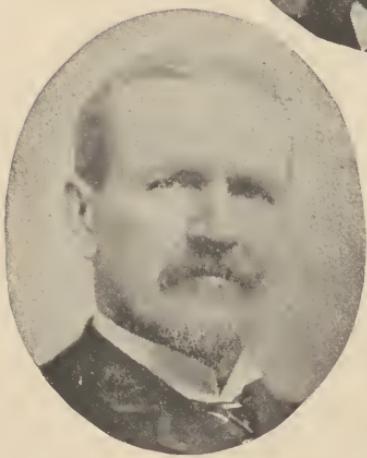
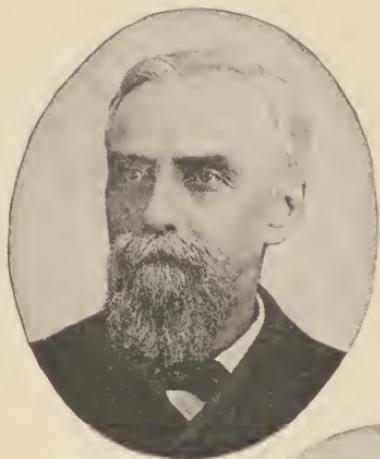
APPENDIX.

We append here the experiments in abbreviated tabular form upon which we have based our conclusions:



METHOD OF CONNECTING DYNAMO AND SUBJECT.





JUDGE THOS. W. COLEMAN.

CHIEF JUSTICE GEO. W. STONE.

JUDGE HENDERSON M. SOMERVILLE.

JUDGE THOS. N. McCLELLAN.

JUDGE RICHARD W. WALKER

EXPERIMENTS WITH DEATH CURRENTS BY MESSRS. BROWN AND KENNELLY
AND DR. PETERSON, AT THE EDISON LABORATORY AND AT
COLUMBIA COLLEGE.

	Pounds Weight	Ohms Resistance	Character of Current	Voltage	Duration of Contact.	Result.
Dog No. 1	10	7,500	Continuous	800	2 seconds	Death
" " 2	20	8,500	Alternating	800	3 "	Death
" " 3	18½	6,000	Continuous	1,000	instantaneous	Death
" " 4	46½	11,000	Alternating	800	2½ seconds	Death
" " 5	50	6,000	Continuous	1,000, 1,100 1,200, 1,300 1,400, 1,420 and 1,200	Instantaneous shocks, the last 2½ seconds	Unhurt
" " 6	55	8,600	Alternating	570	3 seconds	Death
" " 7	41½	14,000	Alternating	250	5 "	Death
" " 8	56	27,500	Alternating	160	5 "	Death
" " 9	59	5,000	Alternating	260	5 "	Death
" " 10	76	15,000	Alternating	330	3 "	Death
" " 11	61	14,000	Alternating	272	5 "	Death
" " 12	91	8,000	Alternating	340	5 "	Death
" " 13	53	30,000	Alternating	220	30 "	Death

EXPERIMENTS CONDUCTED BY MR. A. E. KENNELLY, AT THE EDISON LABORATORY.

	Pounds Weight.	Ohms Resistance.	Character of Current.	Voltage.	Duration of Contact.	Result.
Dog No. 14	21½		Alternating	205	3 seconds	Death
" " 15	19½		Alternating	176	15 "	Death
" " 16	39½		Alternating	178	15 "	Death
" " 17	57½		Continuous	400	40 "	Death
" " 18	18½		Alternating	140	45 "	Death
" " 19	20	8,000	Alternating	255	35 "	Death
" " 20	16½	4,200	Alternating	418	2 "	Death
" " 21	37½	200,000	Continuous	304	80 "	Unhurt
" " 22	12½	4,000	Alternating	100	65 "	
" " 23	33	11,000	Alternating	500	30 "	Death
" " 24	10	9,700	Alternating	536	1½ "	Death
				517	1 "	Death

Objections having been made to the dogs on account of the small weight of the animals, the following larger animals were experimented upon by Mr. Harold P. Brown before your Committee:

EXPERIMENTS CONDUCTED BEFORE THE COMMITTEE OF THE MEDICO-LEGAL SOCIETY, AT THE EDISON LABORATORY, DEC. 5TH, 1888.
BY HAROLD P. BROWN.

	Pounds Weight.	Ohms Resist- ance.	Character of Current.	Voltage.	Duration of Contact.	Result.
Horse	1,230	11,000	Alternating	700	25 seconds	Death
Calf	124½	3,200	Alternating	770	8 "	Death
Calf	145	1,300	Alternating	750	5 "	Death

In most of the dogs the poles were bare copper wire around wet cotton waste wound about a fore and opposite hind leg. Poles the same in a horse, but applied to both forelegs. In the calves sponge-covered metal electrodes were applied, one to middle of forehead, and one near the spine between the shoulders.

Death with the alternating current was without a struggle; with the continuous, painful and accompanied by howling and struggling.

In the earlier experiments where the alternations were from 660 to 4,100 per minute, the voltage was higher. In most of the experiments the alternations were made from 12,000 to 17,280 per minute, and the number of volts electro-motive force required was decreased.

It was suggested to us that the current should be applied through wristlet electrodes. Acting upon this idea we caused the poles to be applied to the forelegs of the horse, but were disappointed in the result.

This method seemed not nearly as effective as our own suggestion of application to the head and back, as was illustrated in the speedy and easy death of the two calves.

Mr. Elbridge T. Gerry, Chairman of the Commission appointed by the Governor, whom we invited to accompany us and witness the latest experiments, has suggested that clock-work be employed to make and break the circuit when criminals are executed in this manner, and we think this a matter worthy of the attention of those who are to carry out the requirements of the law. His request that we specify more particularly the kind of apparatus needed, has led us to make inquiry in this direction. Relative to this matter, Mr. Harold P. Brown, who, by his numerous physiological experiments with death currents and his high attainments in this department of science, is pre-eminently qualified to speak with authority upon this subject, recommends as follows:

"I think a portable steam-engine of three-horse power with a dynamo-electric generator of the alternating type, self-exciting or with a small exciter, would be preferable. I approve fully the recommendations of your committee in regard to the electro-motive force and other details. In my opinion \$5,000 would cover the cost of this apparatus."

If any doubt should exist in the minds of some that electricity would not necessarily be fatal to man because it has been successfully applied to lower animals, we have but to call attention to the fact that since 1883 some 200 persons have been killed, as we are credibly informed, by the handling of electric lighting wires.

As most of these people were killed probably by contact of the hands with the wires, it shows that in man at least death is rapid in this manner. Hence the suggestions made to this Committee as to the use of wristlet electrodes have their value; and it is possible that this method, with the prisoner fastened in a chair, may ultimately prove the most desirable, as doing away with a complication of appliances and lending greater simplicity to the procedure.

FREDERICK PETERSON, Chairman.
R. OGDEN DOREMUS,
FRANK H. INGRAM,
J. MOUNT BLEYER.

Hon. Elbridge T. Gerry, who was named as a member of this Committee, preferred, on account of his relation to the Legislative Commission, not to act upon this committee, and his name is therefore not attached to this report.

Mr. Henry Guy Carleton, a member of the body who has given the subject great attention, read a carefully prepared paper at the December meeting on the same subject, which was considered at the same session at which the report of the Committee was approved.

The law, by its terms, goes into effect January 1, 1889, and should be given a fair trial before popular opinion should be excited against it or any general reopening of the discussion as to its wisdom.

It will be the first attempt made to use the electric current as a means of producing death or as a human punishment.

The Committee of the Medico-Legal Society were authorized and requested to consult electricians; and their report as to the selection of the appropriate current to be used is based as well on actual experiments as on the highest electrical authority.

Mr. Thomas A. Edison, than whom none can be regarded as a higher authority, has said upon this subject:

The best appliance in this connection is to my mind the one which

will perform its work in the shortest space of time and inflict the least amount of suffering upon its victim.

This I believe can be accomplished by the use of electricity, and the most suitable apparatus for the purpose is that class of dynamo machinery which employs intermittent currents.

The most powerful of these are known as "alternating" machines.

The passage of the current from these machines through the human body, even by the slightest contact, produces instantaneous death.

The plan suggested by the Committee is one which leaves no room for intelligent doubt or criticism, that if followed by the warden of the State prison or other officials, the law, in its spirit and intent, will be perfectly and successfully carried into effect.



The Chubbuck, Engr. Springfield, Mass.

Sliny Earle.



MONOMANIA.

BY CLARK BELL, Esq.

President of the Medico-Legal Society of New York.

“There is a pleasure in being mad, which none but madmen know.”—
(Dryden.)

Webster defines monomania as follows :

“Derangement of a single faculty of the mind, or with regard to a particular subject, the other faculties being in regular exercise.”

Worcester defines it from its Greek roots : *μονος*, single, and *μανία*, madness.

“Insanity upon one particular subject, the mind being in a sound state with respect to other matters.”

QUAINS MEDICAL DICTIONARY in a definition under this head, written by Dr. G. F. Blandford about 1882, says : “This term is falling into disuse on account of its vagueness, and because it has been employed by various writers to denote different kinds of insanity. Some have used it to denote an insanity which is indicated by some one particular delusion, the mind remaining clear on every other point. Others mean by it an insanity without delusion ; an *affective* or *impulsive* insanity, the essence of which is the absence of delusion and the so-called integrity of the intellectual portion of the mind.”

Esquirol thought it a disorder of the faculties limited to a few subjects, with excitement and gay and expansive passion, while according to others *melancholia* without delusion would be an instance of affective monomania. “We may take it, however, that all authors are agreed in using the term *monomania* to indicate a par-

tial insanity, which enables the patient to converse and act rationally to a considerable degree, and therefore renders his responsibility a matter of question. Such cases form the ground of forensic contests, whether criminal or civil ; but it is better to affix to them some more precise form and to indicate symptomatologically and pathologically the exact nature of the mental and bodily condition of the alleged lunatic."

Esquirol evidently regarded *monomania* in a different light from the English lexicographers. He, though a pupil and an ardent disciple of the great Pinel, made *monomania* a separate order and head of a class in his classification. PINEL had classified insanity as Neuroses under four heads, viz: Mania, Melancholia, Dementia and Idiotism. Esquirol modified this plan as follows : 1st, Lypomania ; 2d, Monomania ; 3d, Mania ; 4th, Dementia ; 5th, Imbecility and Idiocy.

In describing *monomania* Esquirol says: "Among *monomaniacs* the passions are gay and expansive ; enjoying a sense of perfect health, of augmented muscular power and of general well being, this class of patients seize upon the cheerful side of everything ; satisfied with themselves they are content with others. They are happy, joyous and communicative ; they sing, laugh and dance. Controlled by vanity and self-love, they delight in their own vainglorious convictions in their thoughts of grandeur, power and wealth ; they are active, petulant, inexhaustable, in their loquacity and speaking constantly of their felicity. They are susceptible and irritable ; their impressions are vivid, their affections energetic, their determinations violent ; disliking opposition and restraint, they easily become angry and even furious."

Esquirol, by selecting *monomania* as one of his sep-

arate heads or forms, may be said to have been the one who introduced this nomenclature to the profession—its author or proposer. Upon his authority this term has been adopted by a large number of the medical and by a few of the lay writers.

Morel, in criticising Esquirol's definition and description of *monomania*, says : "We cannot too strongly invite the attentive reader to reflect upon these peremptory passages and consider whether Pinel and Esquirol, who wrote them, should not have arrived at the conclusion that through an unfortunate confusion of ideas they mistook a systemized delusion for an exclusive and local delusion. We affirm the close connection, the solidarity of the ultimate relation between the various acts of the intelligence, not only in the home of our observations and of our personal inductions, but also in the name of the history of philosophy. This being granted the question is whether the condition of mental alienation can break this essential law of the unity of intellectual life ; for it is clear that if logic and experience constrain us to decide this problem in the negative, we ought also to reject the theory of ESQUIROL. We could not have a complete idea of the motives which impel the insane to some of their acts, unless we were freed from error in regard to *monomania*.

Dagonet thus speaks of *monomania* : "In fine, the term *monomania* might without inconvenience disappear from science, where it becomes a cause of confusion and embarrassment in the study of pathological facts."

Marc, who wrote in 1840, and who was a careful student and countryman of Esquirol and Pinel, devotes considerable space to *monomania*. He takes similar views to the illustrious Frenchmen who had preceded him, and treated *monomania* as a type or phase of

insanity, subdividing it into Homicidal Monomania, Suicidal Monomania, Demoniacial Monomania, Sexual Monomania or Erotomania, Monomanie du vol, or Cleptomania, Incendiary Monomania or Pyromania, and lastly Contagious Monomania. (Vol. 1, Marc on Insanity, p. 221 Annales de Hygiene et de Med Legale, Vol. X, p. 357.)

A study of this author illustrates how utterly misleading the term *monomania* is, and how completely and fundamentally authors who do use the term, differ as to its meaning.

Pope means the monomaniacs of Esquirol in his verses :

“Unnumbered throngs on every side are seen,
Of bodies changed to various forms by spleen ·
Here living teapots stand, one arm held out ;
One bent ; the handle this, and that the spout
A pipkin there like Homers tripod walks ;
Here sighs a jar, and then a goose pie talks.”

The lay writers, judges and lawyers almost universally, have given to the term monomania the signification and definition, that Webster and Worcester give in their lexicons.

The judge on the bench, the lawyer and jurist everywhere, regard the monomaniac as one who labors under some *one* delusion, and in all other respects possesses clear faculties. It has been made the subject of judicial decisions in that class of cases denominated “partial insanity,” as well as in “insanity with lucid intervals,” both of which the law fully recognize, where the evidence brings the case within either of these states or conditions, which to the legal and general lay mind, seem clearly recognizable and definable. Among many medical writers this general view of the laity is not accepted.

Kraft-Ebing and the German medical alienists do not use it in such a sense, nor within such limitations.

In Kraft-Ebing's classification of insanity he divides mental disturbances into two great classes: A. Mental affection of the developed brain, which embraces all forms of insanity, and under B. Mental results of arrested brain development, as idiocy and cretinism. Of class A. he makes three subdivisions:

1. Psychoneuroses.

a. Primary curable conditions, and

2. Secondary incurable states under subdivision

a., of which he names "*secundaen verruecktheit*," which is translated by some as "secondary monomania."

In his second subdivision of class A.

2. PSYCHICAL DEGENERATIVE STATES, under subdivision C, of which he gives "*primaere verruecktheit*," which has been translated by some, and we think improperly, "*Primary Monomania*." It is not at all certain that Kraft-Ebing means, to embrace in his classification under these terms, the monomania of Esquirol and Pinel, nor the state which is now usually meant by the German writers, when the term *monomania* is used. There is no high authority we have seen for claiming that Kraft-Ebing would consent, to the use of these terms as synonymous. In the second subdivision of his criticism upon classification of mental diseases, he says:

"Melancholia in the sense of dejection, is closely allied with self-complaining monomania and "demeaning monomania," known as one of the forms of disease frequently found outside of asylums, but rarely in them."

3. Upon the whole, exhilaration with self-vaunting monomania, and volubility of expression, are seldom enumerated under the heads of mania, nor in any delir-

ious state. This classification separates the latter state, from the forms of acute insanity, just as it does exhilaration, from the self-vaunting monomania, of chronic primary insanity.

Theodore Meynert certainly does not use the various forms of monomania referred to in his paper on classification, read before the Austro-Hungarian School of Psychiatry, a translation of which by Albert Bach, is found in No. 4, Vol. 3 of the *Medico-Legal Journal*.

Prof. Senator Andrea Verga certainly does not mean such a type or form of insanity, in the monomania he includes as a distinct heading, and as one of his subdivisions of acquired phrenoses. He enters it as a type, and subdivides monomania into two classes, "Intellectual and Emotional." Indeed, it cannot be said that these terms either mean the same thing in their literal meaning, or that the states described by the German term, *Verruecktheit*, having anything in common, with what is usually regarded as monomania, by either medical or lay writers. It is significant that Kraft-Ebing, in his classification, does not use the term monomania at all, and it is more easy to believe that this celebrated German writer, is one of those, who have decided to discard it altogether.

The American authority, Prof. Ewell, who has translated Kraft-Ebing's classification into his recent treatise, has doubtless been misled, by copying from some of the younger writers, who make this translation more to support theories of their own, than to interpret the author's true meaning. Indeed, as used by Kraft-Ebing in his classification, neither "primaere verruecktheit" nor "Secundaen verruecktheit" as classified by him, can by any fair construction be claimed to mean, the monomania now in use in English-speaking countries, because subdivision 2 of Kraft-Ebing's classification refers to incur-

ble types, and in other respects differs, from the generally received opinion of the proper use of the term, "Monomania," though no one is in doubt as to the literal meaning of the "verruecktheit" of the Germans of which we speak elsewhere.

Greisenger, that eminent name, in speaking on this subject, says:

"Thus the excitement of the monomaniac does not pass so immediately towards the exterior; effort is accompanied by clear conscious thoughts and opinions loses thereby its instinctive character, and becomes actual morbid volition. With far greater, sometimes with perfect outward calm, there is a more profound internal loss of reason, than in mania, because consequences soon result from the general excitation which set aside the essential conditions of healthy mental action." Prof. Lefebere, in his classification, does not include monomania as a head, but in discussing the subject in the paper read before the Antwerp Congress of September, 1885, on the various forms of mania, he says: "Then the extent of the delirium, whether general or partial mania or various, and the various forms of monomania, moral and intellectual insanity should also be regarded as proper subdivisions to types of *monomania*."

It is quite apparent that none of the Belgian Alienists regard monomania with such limitations as do English and American jurists or lay writers. Dr. Steenburg, in his basis of classification submitted to the Belgian Society, after a full conference with prominent alienists in Denmark, Norway and Sweden submits, seven distinct heads or forms of insanity, the third of which he classifies as Degenerative Insanity, which he subdivides as follows: "Primare verruecktheit" or monomania, Hypocondria, Hysteria, Recurrent Insanity, and Moral

Insanity. The primare *verruecktheit* of the Germans, has a much broader sense than can be properly given to the term "monomania," though it would seem that there is an attempt by some writers to use them synonymously. The *verruecktheit* is derived from "verruckt," which means "shifted from its place"—and is analogous to the Scotch phrase indicative of a derangement of the mind, "a bee in the bonnet," or our own expression, "a screw loose," or the significant term, "cracked." Neither of these expressions can with any propriety mean or be used for "monomania," and there is nothing in the etymology of these expressions that at all indicates or means "monomaniacs." Sankey says, speaking of Greisenger's work below, that he divided it into three parts. 1st: States of mental depression; 2d, states of mental exaltation; 3d, states of mental weakness, and in considering the latter he makes four degrees, or excluding the last, *Idiocy*, three degrees of mental weakness. The first of these three divisions, *verruecktheit*, the second, *verwertheil*, and the third *blōsin*. *Verruecktheit* corresponds to our word, imbecility, but Greisenger was, he says, criticised for including this, which, as was said above, literally means a defect in intellect, among the states of mental weakness, since in certain cases according to his own accounts, there remains a good deal of tendency to violence. (Sankey on Mental Diseases, p. 187, et seq.)

Dr. Ralph Parsons says that "within the past few years the term, *paranoia*, has been used to a considerable extent as a substitute for the term *monomania*, especially by the younger writers on the subject of mental diseases." But he claims that the objections to this term as a substitute, are as forcible and strong, as to the use of the term *monomania* itself, because "If the meaning

of monomania is too narrow, for the purpose required, that of paranoia is too broad, and it may be added, too definite for the designation of something different from its evident meaning, which is simply distraction, craziness, insanity."

Paranoia, as the synonym of folly, retains its original signification and has nothing in common with the meaning to be conveyed by the term monomania."

Ewell, in his recent work on Medical Jurisprudence, makes monomania synonymous with paranoia, adopting the views of the ambitious young writer who can hardly be regarded as an authority, and thus defines monomania: "Monomania, as it has hitherto been called, or 'Paranoia,' is a chronic form of insanity, based on an acquired or transmitted nero-degenerative taint, and manifesting itself in anomalies of conceptional sphere which, while they do not destructively involve the entire mental mechanism, denominate it." (Ewell's Med. Juris., p. 360.)

Sankey says upon this subject: "Monomania—This term has been used in different ways; by some it is taken to mean that a patient was mad on only one point or one subject. Such was not the signification meant by those who proposed it, and such a condition does not exist. Most writers have agreed to abandon the term. (Sankey on Mental Diseases, p. 194.)

Greisenger holds similar views. (i. e., *Pathologie and Therapie de Psychischen Krankheiten*, 45.)

Dr. W. A. Hammond in his classification of insanity makes seven general divisions: 1. Perceptual; 2. Intellectual; 3. Emotional; 4. Volitional; 5. Compound; 6. Constitutional; 7. Arrest of Mental Development. In his second subdivision on intellectual insanities he makes six subdivisions, the first two of which

are: *a.* Intellectual monomania, with exaltation. *b.* Intellectual monomania, with depression.

Dr. Ray does not include the term monomania in his classification. Neither do Dr. R. L. Parsons, Dr. H. P. Stearns, nor Dr. Walter Channing. It is not named in the basis adopted by the German alienists at Frankfort on the Main in 1881; in the Westphal plan of 1885, nor the Wiesbaden plan of 1883, nor in Meynert's classification, that of the Swiss alienists submitted by Prof. Willie, nor that submitted by Dr. Steenberg for the Scandinavian countries. By the manner in which they use it, their seventh general heading is "chronic delirium" (monomania). There would be confusion and difference of opinion between American and English lawyers and physicians as to the exact meaning intended to be given by the English alienists, in embracing "monomania" in brackets under the general head of "chronic delirium." It would seem to imply as there used rather certain phases of chronic or incurable mania than an insanity limited to a single subject or indeed a class of subjects.

Dr. Hack Tuke thus speaks of the subject: "We heartily wish 'monomania' had never been introduced into psychological nosologies, for if understood in a literal sense, its very existence is disputed, and if not the various morbid mental conditions it is made to include by different writers, leads to hopeless confusion. With one author it means only a fixed morbid idea, with another only partial exaltations, while a third restricts it to a single morbid impulse. As we proceed we shall consider its signification, but we shall not frequently employ the term."

Dr. Henry Maudsley, writing on monomania, says: "The course of monomania is not often toward recovery. The reasons are plain: In the first place, when it is

secondary to mania or melancholia, it signifies a chronic morbid condition, which is a further stage of degeneration, of the delicate organization of mind. In the second place, when it is primary, it is the morbid outgrowth of a fundamental quality of character, so that to get rid of it, would be to undo the very character from its foundation." And again: "It is doubtful whether there is ever only one point, on which the mind is unsound." And again: "When the monomaniac (so called) comes under the observation of one, who is not only competent to observe, but has sufficient opportunities to do so, it will commonly be found, that there is a bluntness or loss of his natural affection and social feeling, in consequence of his being so entirely centered, in his morbid self; that his character and habits have undergone some change, and that he exhibits an excitability of mind, with loss of self control, in circumstances which would not formerly have provoked it."

The Saratoga conference of American alienists placed *monomania* also in brackets, under their 3rd general subdivision of heads or types, viz: "Primary delusional insanity (*monomania*)."
And while it is here, as in England "relegated to brackets," as Dr. Walter Channing aptly states, it is misleading as thus used in the American classification, and not quite understandable to lay writers or judicial minds, even though physicians should all concur with the eminent men who thus limited it, to primary delusional insanity, without apparently restricting it to one delusion, or even to one class of delusions. It is clear from a statement made by Dr. Walter Channing in his paper on international classification of mental diseases, that it was the intention of the American alienists, to make their 3rd division synonymous with the *Primare Verruecktheit* of the Germans, showing

that the bent of the American medical mind, was to give at least in some degree, to the word "monomania" a special signification, not warranted by its derivation, by the lexicographers, and for which it lacked all the requisites of nomenclature, now recognized as necessary to a correct or available definition.

Dr. Theodore H. Kellogg, an American alienist of experience and a high authority, in an exhaustive essay on insanity over his name in the Reference Hand Book of the Medical Sciences, best illustrates the influence of German ideas, and teachings in his classification, not intended like these to which we have referred, as a basis for international statistics regarding the insane, but as a more complete and exact scientific classification, from the author's standpoint, which should embrace, as Theodore Meynert says, "All the possible learning of its day, and that none should stand that goes beyond that." Dr. Kellogg, a pupil of Meynert, looks at these questions through German spectacles. His classification is divided into two groups: A. (Somato-etiological), and B. (Psychosymptomalological). In his 1st group he has six classes, the 2nd of which is denominated as "Emerging from constitutional neuropathic states, usually hereditary though occasionally acquired." This class he divides into four orders, viz:

1. Instinctive insanity of childhood.
2. Primary monomania.
3. Moral insanity.
4. Periodical insanity.

In his group B, he has only three classes: 1, that of feeling; 2, of intellect, and 3, of will. He divides his first class of group B into two orders; the first, states of depression, and second, of exaltation. This first order (states of depression) he subdivides again into Genera

primary and Genera secondary, in the sixth subdivision of which he places "secondary monomania with depression, and in his second order (states of exaltation), in the second genera, he places in his fifth subdivision "secondary monomania with exaltation."

We have, then, from Dr. Kellogg primary monomania as a disease in his somato etiological group, and secondary monomania, being of psycho-symptological form, and distinguished by depression on the one hand, and exaltation on the other. No one can for a moment contend that Dr. Kellogg uses the term in the restricted sense of the lexicographers. All jurists and lawyers would be in doubt, as would some medical men, as to what he does mean, by his use of these terms, if they had before them, only the classification itself. Dr. Kellogg says, however, in explanation: primary monomania (order 2) includes all those forms of fixed and limited delusions "that are the morbid result and expression of a constitutional neuropathic condition." And he fully describes his use of the term and of the secondary monomania, as he uses them (which have very little to do with the term as generally understood by legal or lay writers), and admirably and ably gives, that extended use of the term, that the abler writers of the German school have adopted. as a sort of growth, about which there is so much confusion among medical writers and which is *terra incognita* to laymen and jurists. It has come to be used in a very broad way by some writers who have not as completely defined what they do mean, as has Dr. Kellogg, but whose definitions are quite unknown, to the general reader. Dr. Kellogg gives the ablest and most complete classification, recently contributed to the profession, from a scientific standpoint, but not at all fit for a practical use, as a basis of

international statistics of the insane, and it is marred by the use of those terms, the signification of which, would not be correctly understood, by the average or general reader at all.

Thomas Medical Dictionary, a medical work, thus defines "monomania" (from the Greek *μόνος*, single, only, one; and *μανία*, madness): a kind of insanity in which the patient is irrational on one subject only, on all others clear and correct. This term has been employed by various writers to denote different kinds of insanity, but authors now generally agree in using it to indicate a partial insanity, in which the patient can converse and act rationally to some extent. The term is falling into disuse on account of its vagueness. Among physicians who advocate the rejection of the term monomania, we may mention several. Pliny Earls says in his letter to Clark Bell, Esq., of April 15, 1885 (Medico-Legal Journal, vol. 3, p. 464): "I would reject the term monomania chiefly, because, 1st, I have never seen a case in which the delusion was confined strictly to one subject, although I have seen many in which it was limited to a class of subjects, or to one central subject, and all or many other subjects related to or connected with it; and 2d, because it has been extensively used in this country, as a cover for cases not only of delirium tremens and alcoholism, but in a multitude of instances of simple habitual inebriety."

Dr. Walter Channing, the able Secretary of the Saratoga Conference, in writing of its action regarding monomania, says: "Our form 3 of 'primary delusional insanity' was the only term coined for our arrangements, and is naturally the one most open to criticism. We desired to do away with 'monomania,' an expression which has slowly lost its significance, until it is now rele-

gated to brackets, and will soon be lost in oblivion" (American Journal of Insanity, January, 1888, p. 378).

Dr. Henry P. Stearns, the Vice-President of the Saratoga Conference, in an able paper on "Classification of Mental Diseases," says upon this subject: A few words in reference to the use of the term 'monomania.' Esquirol introduced this term, to designate a species, rather than a genus, of mental disease. It would appear that at first he thought, there was a special form *i. e.*, insert the clause pp. 354, 355, 356 in brackets, American Journal of Insanity.

Dr. Allen McLane Hamilton says in his recent work: "The term 'monomania' is an impractical refinement."

Dr. Ralph L. Parsons, an alienist of large and extensive experience, in an able paper upon "monomania," claims that this term, as used by Esquirol, was misleading, and its selection unfortunate for the purpose for which it was designed or intended to be used, by Esquirol himself, while the term as now used by medical men, does not even mean what Esquirol intended, illustrating that the monomaniac, as understood to-day, is often depressed in mind and hindered in his mental operations, the opposite of the "gay, rash, petulant, audacious," talkative, blustering, pertinacious and easily irritable type, described by him, and is not necessarily found in the course of the disease to be "of more acute duration shorter and termination more favorable," as defined by Esquirol. Dr. Parsons says in his paper "Nomenclature in Psychiatry, Journal of Nervous and Mental Diseases, vol. xlv., No. 4." "The objections to the term 'monomania' are such that many physicians engaged in the care of the insane do not use the term at all." And in his classification of mental diseases he omits entirely the term "monomania" altogether in a

very elaborate and able classification, as misleading and improper to be used. In the former paper, after re-viewing an author who had undertaken a defence of the term, which he characterized more as an apology than a defence, and a general consideration of the views of various writers on the subject, Dr. Parsons remarks:

“The objection to the term, however, does not lie in the fact that its literal meaning, and the signification attached to it, by learned writers on the subject, fail to correspond, but in the fact that its literal meaning is so well defined and so easily understood, that it involves within itself, an idea at variance with its real scientific meaning ; and hence that its literal meaning is understood, instead of the real one, by most persons who see or hear the term.” He also remarks in the same connection :

“The misleading of the term is liable to be of especial disadvantage, in courts of justice where the correct definitions of the learned counsel and of expert witnesses on one side, may fail to enlighten the intelligent jury in opposition to the interpretations of counsel on the other, aided by the evident implicit meaning of the term.”

From what has been said, it is quite apparent that the term, monomania, should now be dropped from the nomenclature of mental diseases. It is not enough that Griesenger, Sankey, Ray, Earl, Tuke, Stearns, Parsons, Chanuing and a great array of names, should so advise. It should be made the subject of some general authoritative action, which would arrest the attention and exercise a controlling influence, upon the scientific world. As a summary of the views, of so many of our abler minds and the situation, it may be said to-day, that the use of the term should by general and universal consent, be abandoned as misleading and unreliable.

This paper has been prepared to call the attention of the Medico-Legal Society, and of the American Association of Medical Superintendents of Insane Asylums, to the subject. The former has in its membership at the present moment a large number of superintendents of asylums in America, and in its corresponding and honorary list a very large number of the leading alienists of the world. If this proposition should receive the favorable consideration of a carefully selected committee chosen from the ablest alienists of that body, and should receive the endorsement of your association, it might be followed by similar action in the British Medico-Psychological Association, in the Society Medico Psychologique of Paris, the Societies of Psychiatry of Germany, Italy, Russia, Holland, Belgium, and other countries, and "monomania" be hereafter studied historically, as a curious illustration of how the same word meant an entirely different mental state or condition in one country, era, or profession, from that which its derivation signified, and from the meaning universally given it by the lexicographers and the legal profession.

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SEPARATE HOSPITALS FOR INSANE CON- VICTS.

By CLARK BELL, Esq.
President of the Medico-Legal Society of New York.

While most alienists and legislators agree that the defenceless insane should not be subjected to contact with those insane who have committed crimes, or with criminals who have become insane while serving sentence, there seems in the smaller states an insurmountable difficulty, in the way of erecting hospitals for the class called "Criminal Insane."

It is an outrage to compel an insane person to associate with convicts, sane or insane, and none feel this more deeply than the insane themselves, not even excepting their immediate friends.

This offence against the insane, by the states or authorities who commit it, is all the more indefensible because of the utter defencelessness of the insane themselves, even to protest against it. They have no organ, and no ear hears their voice.

Among all the most miserable of the human race, even under the most favorable conditions, there are no greater unfortunates than the hopelessly insane.

The Earl of Sheftesbury, after nearly half a century of experience with British asylums, public and private, broader and wider than any living man of his day, or of our century, declared his unwillingness to trust even the relatives of the insane, with the poor duty of visiting them in their affliction, and asked the English Parliament to make visitation by relatives compulsory by law.



W. J. Ladd

Neglect, want of proper care and treatment, brutal attendants, want of proper sanitary precautions, cold, insufficient clothing, solitary confinement, imprisonment, restraint in all its forms, are ills which legislators can charge to the account, neglect or misconduct of the officials or superintendents in charge of asylums, their assistants and employees ; but forcing the innocent insane to consort with convicts, is a crime of which the state that suffers it is guilty, and for which legislators and not medical superintendents, should be held responsible.

RELIEF BY STATES.

How can this duty, which the State owes to its insane, be best discharged in a small State like Delaware or Rhode Island ?

How can the offence and outrage perpetrated by the State, in committing the insane, called "criminal," to the State Asylum for the innocent insane, in states like New Hampshire and other of the lesser states be prevented and avoided ?

These are the problems of the hour.

There were in 1880, 350 insane convicts confined in the various hospitals of the insane in the United States.

If it were true in any state that the number of insane called "criminals," was sufficient to warrant the construction of a small separate hospital for them, under a superintendent and assistants, that state would be wholly without excuse in not so doing.

Take the case of New Hampshire, which has only fourteen convicts committed either by order of the court, to the State Asylum, or by the Governor and council, from inmates of prisons, who became insane while serving sentence. It would not, perhaps, justify the erection of a costly building in that state for such a

small number, but a state like New Hampshire, who only contributes \$6,000 per annum to the support of the State Asylum for the Insane, might well purchase or lease a small property in which to care for the insane of this class, that would not of course, be attended with very much expense, and at the same time meet the issue in an honorable way.

It would not cost that state or any state more to support in an institution, with proper care, twenty or thirty inmates with one physician, one assistant and three or four attendants, than it would the physician who maintains a private asylum for a much less number, at his own cost, who receives compensation therefor.

There is in our judgment no state that has even five or six of this class of insane, who can honorably justify itself in forcing the insane called "criminal" into the State Asylum with the innocent insane, upon any such a plea as that of the expense of maintaining so small an asylum.

When physicians competent for such a service can be found who will undertake to lease or furnish a suitable house for such a number, for a reasonable compensation, where can any pretence be reasonably or honorably maintained for the continuance of a system defended by none?

Even if there were force in the excuses, commonly presented by those officials responsible for the existing state of things in so many of the American states, there are, it seems to me, several remedies within the reach of legislative action.

1st. By the passage of laws in the states permitting the insane of this class from sister states to be received, by agreement, under such regulations and upon such terms, as would produce the desired result, and allow

the larger states to have these asylums, like New York and Michigan, to receive inmates from such states as had no asylums, at the expense of the state sending them, at a per capita rate.

2d. By two or more of the lesser states either uniting in the erection and maintenance of a suitable hospital for the wants and requirements of the states uniting in the expense, to be borne ratably or equally by each, and the government, management and supervision regulated by a board agreed upon by both, who would select the superintendents and employees.

3d. By one small state providing by treaty or arrangement for the care of its insane of this class, with another state, who either had such an asylum or proposed to erect one, and located so contiguously to each as to make a common use by the two, or more states, convenient to all, and to offer to each all the advantages of a large institution for the so-called "criminal insane."

RELIEF BY THE GENERAL GOVERNMENT.

Broadmoor Asylum, in England, reaches this class for that country, where the evil can be directly reached by the general government.

Cannot our general government reach also a solution of this question?

The government of the United States now maintains a national asylum for the insane in the District of Columbia.

The same authority exists for the construction by the general government, of a suitable asylum for the insane called "criminal" as for the innocent insane.

At the present moment there is confined in the Government Asylum for Insane at Washinton, John Daley, recently committed, who killed at Washington Joseph

C. G. Kennedy. He was committed by the Supreme Court of the District upon the verdict of a jury pronouncing him insane when he committed the homicide.

The District of Columbia is not, perhaps, suitable for such a purpose, as it is smaller than the lesser states, and has less in population than most if not all of the States. If, however, the general government should erect in the district a hospital for insane convicts, it would not only be within its general province and powers, but would be the simple, direct discharge of the same duty and obligation which rests upon the several States, in what the Government owes to the insane of the nation of this class ; and the same responsibility rests upon Congress for the District that rests upon the legislatures of the states for their citizens.

If Congress, in establishing this hospital, should provide that insane convicts from any state or territory where no hospital for insane convicts was in existence, might be committed to the National Hospital, either by the courts at the trial, or by the authority of the governors upon such terms as should be just and equitable among the states—if it was felt that such a change should not be maintained at the expense of the general government—the problem might thus be immediately solved.

The case of Daley and similar cases occurring or likely to occur, brings this live question, with its responsibilities, upon our national government.

We hope that it will be met with promptness and that consideration which the importance of the subject demands.

The Government of the United States would doubtless add to the dignity and greatness of the nation by establishing on a scale equal to the establishment at Broad-

moor, England, a hospital for insane convicts, intended to provide for that class throughout the nation, on a plane equal and abreast with the civilization of the age, which would at once remove the existing evil, and erase from our states the stigma now resting upon those who commit their insane from motives of pretended economy to the state hospitals where the innocent insane are confined.

*HYPNOTISM.**

By CLARK BELL, Esq.

President of the Medico-Legal Society of New York.

The medical profession in America do not give this subject the attention its importance deserves.

We know of no medical man of prominence in America who has publicly identified himself with the investigation of this science as some of the most eminent men in foreign countries have recently done.

Dr. WM. A. HAMMOND, some years ago, gave the subject considerable attention, and gave public experiments before the Medico-Legal Society, of patients under its influence, exhibiting the usual phenomena of unconsciousness to pain, and entire domination of will power and of action.

The late Dr. GEO. M. BEARD was also a student of this phenomena, and, had he lived, would, doubtless, have contributed to, and have been now conspicuously at the head of the science here. A few physicians here and there have touched it on the border lines, but, as a profession, medical men in America know little concerning it, and the public, who naturally look to them for advice on such subjects, are entirely ignorant of this phenomena, or the progress made abroad in the investigation of the science.

HACK, TUKE, IRELAND, MATTHIAS, ROTH, GURNEY, MYERS, in England—CHARCOT, BINET, FÉRE, GILLES DE LA TOURETTE, PAUL REGNARD, FONTAN and SE-

* Read at the Annual Meeting of the Medico-Legal Society, December, 18, 1889.



Newly Elected and Retiring Judges of the Superior Court and Common Pleas.

Judge Roger A. Pryor.

Ex-Chief Justice Larremore

Judge David McAdam.

Ex-Judge O'Gorman.

Judge Freedman.



New and Retiring Judges of the City Court of New York.

Ex-Judge Giegerich.

Chief-Justice Ehrlich.

Judge Fitzsimmons.

Judge John H. McCarthy.

Judge Newburger.

QUARD, AZAM, H. BEAUNIS, E. BERILLON, OCHOROWICZ, LADAME, DELBOEUF, MONTIN, VOISIN, J. LUYS, and others, in Paris; LOMBROSO, TAMBURINI, SEPILLI, and others in Italy; HEIDENHAN and VON FRANKEL in Germany; GEESMAN, OBERSTEINER and KRAFT.-EBING in Austria; BROBERG and FRED. BJÖRSTRUÖM of Sweden, are some of the names of recent authors abroad who treat upon this subject as a distinct branch of science. The experiments at Salpetriere, conducted under the guidance of Prof. CHARCOT, have gone to the scientific world in detail for some years, and an International Congress of Hypnotism, experimental and therapeutic, was held at Paris from August 8th to 12th, 1889, attended by distinguished men from Russia, Holland, Switzerland, France and other countries, where papers were read, upon the propriety of interdicting, by law, public exhibitions of hypnotism, and for regulating its use or practice by legal statutes, as well as upon other phazes of the science. The Paris *Revue de l'Hypnotisme* is entirely devoted to this science.

In the Medico-Legal Society, in January, 1889, the chair called attention to the medical neglect of this subject, and named a committee to make investigations through the year and report their labors to that body. The majority of the committee did not go forward with the work, and the committee was reorganized, but have, so far as known, made no report, if even they have done any work whatever since their reorganization.

At the recent session of the Psychological Section of the British Medical Association, held at Leeds, August 15, 1889, under the Presidency of Dr. HACK TUKE, Dr. AUGUSTE VOISIN, one of the physicians of la Salpêtrière, Paris, made a communication upon the treatment of

Insanity and Neurosis by Hypnotic suggestion and on the application of the method to the moral and instinctive perversion of backward and imbecile children in which he is reported to have said :—

TREATMENT OF MENTAL DISEASE BY HYPNOTIC SUGGESTION.

That until within the last few years no serious attempt had been made in this direction, and that it was generally supposed that the insane could not be hypnotised. He had been able to develop this method in his hospital and private practice. Catalepsy ought to be carefully avoided, because the hypnotised individual ought to be able to preserve the use of his senses, especially of hearing. He was convinced that hypnotism was only useful when it was possible to make use of suggestion ; and he was firmly of opinion that, as Braid had said, the hypnotic state originated in the nervous system of the hypnotised person. The basis of hypnotic treatment and of suggestive therapeutics detailed the various categories of the insane with regard to whom he had made observations. By this treatment he had cured persons suffering from hallucination and delusions, and from disturbances of special and general sensation. Suicidal ideas and acute and furious mania had disappeared under the use of this method. Cases of insanity were cited which had only been calmed after several hours. The treatment had also succeeded in the mania and agitation observed during the catamenia. Patients in this category had even remained asleep for from six to eight days. The method had also succeeded in dipsomania and in morphinomania. He had also been fortunate enough to cure obstinate cases of onanism in this way, and had applied the method *à la moralisation des enfants dépravés*. He had thus completely transformed their habits of thought, and had brought them to love the good, whereas formerly they had only loved the evil. He had also succeeded in curing amenorrhœa in the insane, which was a frequent cause of nervous and mental troubles ; he particularly insisted upon this point as proving it was possible to influence the functions of the sympathetic system. The relapses were not more than one-tenth of the cases treated, and this was probably due to the repetition of treatment over a few months. However, the results were definite and he hoped the practice would be tried in England and have good results.

He said that for success in the hypnotising of patients many attempts were frequently necessary. Hence he could not give a suitable demonstration at Wakefield ; but his place at Paris was open to all the physicians of the Continent. It was immoral to hypnotise healthy persons, being only proper in the case of the diseased. He repeated his statements as to the ailments which could be serviceably treated. For success varied processes were often necessary.

The local press have taken up the discussion in America, which the physicians have neglected.

The *New York Ledger*, in its recent number, treats the subject editorially from its social as well as its legal aspect, and so ably that we give the article entire:

HYPNOTISM.

The importance which hypnotism may assume from a social and legal point of view was recently exemplified by an experiment performed by an English clergyman and described in a London medical journal. It seems that a confirmed inebriate was thrown by the ordinary simple methods into a trance, and while in the hypnotic state he was informed that any indulgence in alcoholic beverages would be immediately followed by vomiting. So irresistible was the effect of the suggestion, that after emergence from the trance the patient suffered a violent attack of nausea whenever he attempted to drink any kind of liquor. The result was that he became a total abstainer.

This is, so far as we know, the first case in which the hygienic and ethical significance of the phenomena of hypnotism observed at the Paris hospital of the Salpetriere has been demonstrated. In the course of the investigations that have for some years been prosecuted at that institution, it has been shown that persons possessing an unusually nervous organization can easily be hypnotized, and that a suggestion or an order impressed upon them while in this condition will be subsequently carried out, although they will be entirely ignorant that such an order has been given. A wooden dagger, for example, was placed in the hand of a hypnotized young woman and she was directed to steal behind one of the persons present and drive the dagger into his heart. Upon awaking from the trance she obeyed the injunction in every particular, and there was no doubt in the minds of the observers that, had the weapon been steel, the blow would have been mortal. Interrogated respecting the motive of her conduct she averred that she had acted under an uncontrollable impulse, for which she could not account. Many other experiments of a like decisive character were made at the hospital in question; some of which are recorded in a work lately published in the International Scientific Series.

From such facts, the inference was obvious that the power of producing hypnotic phenomena might, in the hands of unscrupulous operators, be fraught with grave danger to the community. The whole science of medico-legal jurisprudence might have to be reconstructed, should it become necessary in many cases to shift the responsibility for crime from the hypnotized agent to the antecedent suggester of the deed. It would also seem to follow, that the superinducing of hypnotic trance, like the administration of poisons, should be carefully regulated by law. Such regulation has already been earnestly demanded by students of the subject. It remained, however, for the English clergyman to prove that the power of molding the impulses and conduct of hypnotized persons might, in the hands of pure-minded and upright men, be made a blessing instead of a bane to society. What seems to be the irresistible force of suggestion under hypnotic conditions, might be systematically applied to the work of moral regeneration. If the virtue of sobriety can be, as we have seen, im-

planted in a confirmed inebriate, it should by the same means be possible to instill other virtues. The will of the hypnotized patient, once subjugated, could be enlisted on the side of honesty, purity, and truth-telling. It might be made a perpetual incentive to well-directed labor and an honorable life.

The medical journal to which we have referred, in commenting on the authenticated cure of drunkenness by hypnotic suggestion, advocates the application of the same curative agency on a large scale to inebriate asylums. The next step would be the subjection of the inmates of prisons to hypnotic treatment, with a view of effecting a radical reformation of character. It is only, however, with extreme tardiness and caution that legislation takes account of scientific discoveries. Not until hypnotic phenomena have been more widely studied and indisputably verified, can we expect to see their moral and social significance attract the eager and anxious attention of the community at large.

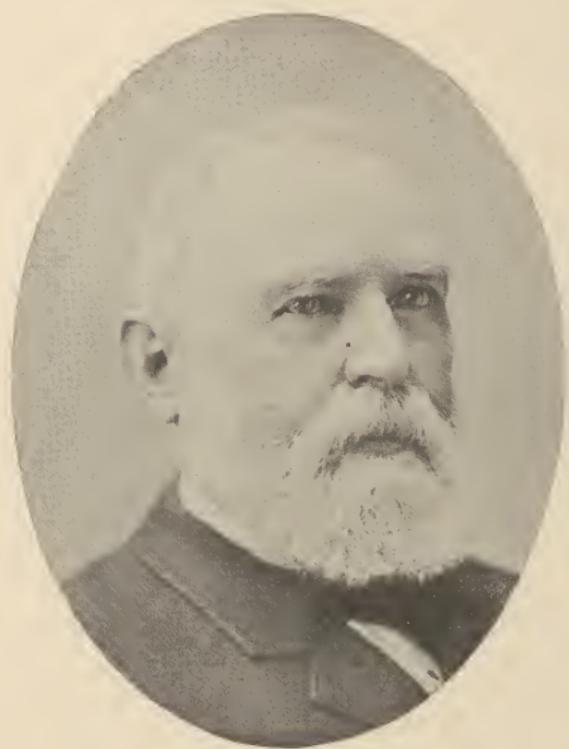
The importance of the subject cannot well be overestimated. Our judicial tribunals are wholly unprepared for the investigation of crimes thus committed.

A prominent judge upon the criminal bench of this city has, as it has been said, expressed doubts as to the existence of such a state as the hypnotized condition, which would affect responsibility for acts committed in that condition.

The public mind cannot be said to recognize it, and the learned and honest judge reflects popular opinion and popular ignorance of the subject.

It is doubtful if the legal profession, as such, are *en rapport* with the scientific truths of this branch of science, as recognized in France judicially in the tribunals.

It is probably true that three-fourths, if not more, of the medical profession in this country are ignorant of what has been demonstrated at Sâlpetrière, and what is recognized as scientific truth at this moment in all foreign schools or universities of learning as to this phenomena. It is no longer an open and disputed question in France, Austria, Italy, Russia, Germany. It is an accepted, scientific fact. What is now studied is its phenomena, its problems, its sequella. It is a recognized



EX-CHIEF JUSTICE DURFEE, of R. I.

fact, but what are its phenomena and limitations is the remaining question.

The questions raised by the editor of the *New York Ledger* are immensely significant and of the greatest importance to the race.

How far can hypnotism, properly administered, be used as an incentive to higher education?

How can it be used as a moral remedy to correct evil habits, bad practices or evil inclinations?

How far can it be used as a means for moulding character and lifting the aspirations to nobler ideas and higher planes of action and of life?

These are the questions of the hour, and these the subjects which should arrest the attention of the learned committee of the Medico-Legal Society.

The Humboldt Publishing Co. of this city have taken up the subject, and have published the work of Prof. Fred. Björnström of Stockholm Hospital, translated by Baron. Nils. Posse, M. G., of Boston.

Chapter XI., of this work, treats of *Hypnotism and the Law*.

We quote :

Hypnotism comes in contact with the law at more than one point, and many and intricate are the Medico-Legal questions which it has already raised. The most important of these questions are :

1. Can the hypnotized be physically or mentally injured by hypnotism?
2. Can the hypnotized fall victim to crime?
3. Can the hypnotized be used in the service of crime as a ready tool without a will?
4. Are the hypnotised responsible?
5. Should hypnotism be prohibited?

We regret that want of space prevents our giving the whole of the chapter which contains an answer to these questions.

The American Journal of Psychology has devoted more space and attention to this subject than any scientific journal on this side of the sea. Its editor is Prof.

G. STANLEY HALL, President of Clark University, and this journal, while not reproducing an original article from an American author upon this topic, so far as we can recall, has devoted considerable space in its psychological literature to "Hypnotism," as a subject or subdivision, and in this department has noticed and reviewed very much of the recent foreign literature of this department of science, and has also noticed quite generally what has appeared in our American, and in the foreign, press on this topic.

Prof. STANLEY HALL is, perhaps, one of the best educated and equipped men, this side the Atlantic, to lead in these investigations, outside of organized bodies or societies.

His journal must take notice of and record all discoveries, especially as to judicial or medico-legal questions, arising affecting responsibility or related to criminal anthropology.

Dr. ED. J. COWLES, of McLean Asylum, and Dr. WM. A. NOYES, of the Experimental Station there, are qualified eminently for this work, while FRED. PETERSON, M.D., FRANK H. INGRAM, M.D., M. ALLEN STARR, M.D., of New York, and others of the junior rising medical men will, doubtless, do valuable work in this domain in the near future.

We learn that Dr. JASTROW proposes to prosecute psychological research in the university of Wisconsin ; that Dr. CATTELL intends similar studies in the University of Pennsylvania; Dr. WOLFE in the University of Nebraska; Dr. JAMES at Toronto; and that Prof. LADD, of Yale, and Prof. JAMES, of Harvard, will continue their important investigations in psychological and psychical research.

We look for important advances all along the line in the coming years of 1890 and 1891.

The importance of these investigations upon medical jurisprudence, upon the tribunals and courts of justice is recognized abroad. Is it recognized here?

Much of what seems now a mystery of motive of action, so pertinent to legal and criminal responsibility, must, in some cases, be involved in this enquiry.

The recent startling and, in many respects, almost incomprehensible case, in which the Hon. Ray Hamilton was so strangely affected, may be shown to be due to the well-defined phenomena of hypnotism.

It is difficult to understand certain phases and complications, in that, as in other curious and remarkable cases, to which our attention has been recently drawn, except by a study of the psychical phenomena of hypnotism.

A common and almost universal error is the popular impression that only weak, sickly, nervous persons, and especially hysterical women, were susceptible to hypnotism. This is a popular fallacy and error. Björnström says, upon this subject :

"Later experiences, and particularly the elaborate statistics of Liebault of Naney, have shown that almost anybody can be hypnotized. A difference, however, must be made between those whom it is easy and those whom it is difficult to hypnotize.

"Among the former, belong without doubt the hysteria; but otherwise physical weakness gives no special predisposition. The willingness of the subject, his passivity and power to concentrate the thought or attention on the intended sleep have more importance. Thus, it has been found that even the strongest men from the lower classes (meehanies, laborers soldiers,) are more easily put to sleep than intelligent persons, who voluntarily or involuntarily let their thoughts wander to various objects which distract their attention. It will often be found that those who cannot be hypnotized in the first, second or third *seance*, yet succumb to renewed patient efforts."

It was the opinion of Dr. EDWARD PAYSON THWING, as stated to the writer, who had conducted many experiments, that it was doubtful if there was any person who could not be hypnotized, who had sufficient will power to concentrate the thoughts upon a subject, to remain

mentally passive, and who would not mentally oppose or combat the influence of the hypnotizer, or who would mentally yield to it. That after long and repeated trials, under favorable conditions, with patient effort, every one would ultimately succumb.

It is a subject which should not longer be neglected or ignored, and to which the earnest attention of advanced students of medical research is earnestly suggested to meet the popular demand for light upon the science, and researches regarding its phenomena is now the duty of such of our medical men as are competent to grapple with the subject.

TENTH INAUGURAL ADDRESS
OF
CLARK BELL, ESQ.

PRESIDENT OF THE MEDICO-LEGAL SOCIETY.

FELLOWS OF THE MEDICO-LEGAL SOCIETY :

The year 1889 has been a memorable one in the annals of the Medico-Legal Society, not only in the increase of membership, but in the scope, character and importance of its labors.

MEMBERSHIP.

On January 1, 1889, there were upon the roll of the Society 594 members, of whom 429 were Active, 154 Corresponding and 11 Honorary; composed among Active of Legal, 158; Medical, 254; Scientific, 17. On the Corresponding list, Legal, 20; Medical, 124, and Scientific, 10, with 5 Legal and 6 Medical men on the Honorary list. A total of Legal, 183; Medical, 384; Scientific, 27.

During the year 1890, we have elected 104 Active, 204 Corresponding, and 3 Honorary members, making a total of 311. We have lost by death, Active, 5; Corresponding, 4, and Honorary, 1; a total of 11. Leaving our membership on January 1, 1890, as follows: Active, 527; Corresponding, 204; Honorary, 12. A total of 743 upon our roll, over and above all deaths and resignations.

We have added to the Honorary list three names, and all from France—Prof. Brouardel, Prof. Charcot and Dr. Louis Penard, ex-President of the Medico-Legal Society of France, and one of its Honorary members. The Corresponding list of members elected in 1889 embraces many eminent names. They are as follows: Dr. Van

Persyn, President of the Dutch Society of Psychiatry ; Prof. C. Luchini, the eminent Italian ; Prof. Dr. Angelo Gubernatis, and Senator Francesco Duranti, of the Italian Parliament ; Dr. J. G. Pinkham, ex-President of the Mass. Medico-Legal Society of Mass.; Dr. Sidney Phillips, of London ; Dr. Droineau, Gen'l Superintendent of the Asylums of France ; Dr. De Draenne, Vice-President of the Belgian Society of Mental Medicine ; Dr. Lutaud, Dr. Maurice Langier, Dr. Riant, M. Demange, Vice-President Medico-Legal Society of France, all of Paris ; Dr. John B. Kerr, of Canton, China ; Dr. Victor Parant, of Toulouse, France ; Dr. F. Serafini, of Italy ; Martha J. Lamb, of N. Y.; Dr. Jos. Workman, of Toronto ; Wm. McArthur, L.L.D., of N. Y.; Dr. H. A. Buttolph, of N. J.; Prof. Dr. Von Steenberg, of Copenhagen : Anton Ritti, M.D., Secretary Societe Med. Psychologique, of Paris ; Lucien Puteaux, Member of the Committee of Visitation of the Insane Asylums of the Seine, Paris ; Docteur Paul Topinard, Editor Revue d' Anthropologie, Paris ; Auguste Voisin, M.D., Medicin de la Salpetriere, Paris ; Albert Regnard, Inspector General of Administration, Department of the Interior, Paris ; Theophile Roussel, M.D., Senator of France and President of the Council Generale of Lozere, Paris ; Alfred Moreau, of Brussels ; Dr. Cuylits, Supt. of Insane Asylum, 44 Boulevard de Waterloo, Brussels ; Albert Pétrol, Advocate Court of Appeal, Member of Municipal Counsel of Paris, 53, Rue Bonaparte, Paris ; Henry Napias, M.D., Inspector General of the Administrative Service, Department of the Interior of France, 68, Rue de Rocher, Paris ; Manuel A. Muniz, M.D., Surgeon of the Peruvian Army, Melcher-Mile 143 Lima, Peru ; Doctor D. Cabred, Supt. Insane Hospital, and Prof. in Faculty of Medicine at Buenos Ayres, S. A.; Dr. Joaquin Goncalves Rames,

Sanitario de Barbercina, Minaz-Geraes, Brazil ; Docteur N. Bajenoff, Supt. Insane Asylum of Riazanne, Russia ; Doctor P. A. H. Sweens, Supt. Insane Asylum at Voorburg-Vuchs, near Bois-le-duc, Holland ; Prof. Lange, Vice-President Danube International Congress, Copenhagen ; Prof. Edmund Hausen, Geret, of the University, Copenhagen ; Prof. Howitz, of the University, at Copenhagen ; Mr. Kunowsky, President of the Supreme Court, Breslau, Silesia, Oberstaatsanwalt, Rosenberg, Breslau, Silesia ; Prof. Sergiewitch, Professor of Jurisprudence at the University of St. Petersburg ; Prof. Tschye, Professor of Mental Medicine at the University of St. Petersburg ; Prof. Woladiniroff, Professor of Jurisprudence at the University of St. Petersburg ; Prof. Sorohin, Professor of Legal Medicine at the Academie of Medicine of St. Petersburg ; Prof. Uending, Professor of Legal Medicine at the University of Moscow ; Prof. Belin, Professor of Legal Medicine at the University of Moscow ; Prof. Patenteo, Professor of Legal Medicine at the University of Kharkoff ; Prof. Obolonsky, Professor of Legal Medicine at the University of Kieff ; Prof. Swoydeff, Professor of Legal Medicine at the University of Kazen ; Prof. Froitsky, Professor of Legal Medicine at the University of Varsovie ; Prof. Sloutschnevny, Professor of Jurisprudence, and Senator of St. Petersburg ; all of Russia.

NECROLOGY.

The loss by death has been unusually severe, embracing that eminent name from our Honorary list, Prof. Francis Wharton. From the Corresponding list, Hon. Stanley Matthews, of the Supreme Court of the United States ; Franz Von Holtzendorf, of Munich, surely the foremost of continental jurists, editor of *der Gerichtsaal* ;

W. H. O. Sankey, M. D., the eminent English alienist and authority on Nervous and Mental Diseases ; Prof. Dr. Ludwig Schlager, of Vienna, a man of the highest distinction ; Hon. S. S. Cox, one of the oldest in term of service of the members of the American Congress, and Joaquin G. Lebrado, an eminent Cuban physician of Havana. From our Active list we have to record the loss of Dr. Ira Russell, one of the Vice-Presidents of the Society in 1888, and elected a Vice-President for Mass. for the year 1889 ; E. N. Dickerson, a life member who had contributed \$500 to the Library of the Society, and had been honored by naming him as one of the founders of the Library ; Prof. A. B. Mott, son of the illustrious Valentine Mott, long an Active member and friend of the body, Dr. McDowell of Jersey City, and Dr. J. H. Leverege of this city.

THE LABORS OF THE YEAR.

The following papers have been read and many of them published in the MEDICO-LEGAL JOURNAL:

“Inaugural Presidential Address,” by Clark Bell, Esq.; “Death Current Experiments,” by Harold P. Brown, Esq.; “Insanity as a Defence to Charge of Crime,” by J. Hugo Grimm, Esq.; “Periodic Insanity among Women,” by Alice Bennett, M. D., and “Contributions to the Subject of Dr. Bennett’s Paper,” by W. W. Godding, M. D.; P. Bryce, M. D.; C. A. Rice, M. D.; Prof. J. J. Elwell, Dr. A. P. Reid, Dr. Lucy M. Hall, Albert Bach, Esq.; Dr. Matthew D. Field, Mrs. M. Louise Thomas, Dr. Eliz. N. Bradley, Mr. Moritz Ellenger, Dr. Frank H. Ingram, Mr. E. W. Chamberlain and Mr. Clark Bell ; “The Lebkuchner Case,” by Matthew D. Field, M. D.; “A Clinical and Forensic Study of Trance,” by E. P. Thwing, M.D.; “The Insanity of Child Birth in its Relations to Infanticide,”

by H. M. Hyzer, Esq., of Janesville, Wis.; "Report of the Committee on Care of the Insane in County Institutions," with letters from Dr. J. J. O. Dea, Dr. F. W. Higgins, Dr. W. C. Wey, Dr. W. G. Stevenson, Dr. O. F. Cobb, Dr. John Lambert, Dr. L. A. Tourtellot, Dr. R. L. Parsons and Clark Bell, Esq.; "The Hygiene of Interments," by C. F. Lindorme, M. D.; "Classification of the Varieties of Insanity," by Joseph Jones, M. D.; "Resumé of Recent Trip to England, France and Belgium," by Clark Bell, Esq.; "Medico-Legal Points in case of Michigan vs. Millard," By Prof. Victor C. Vaughan; "The Post Mortem Absorption of Strichnine," by George B. Miller, M. D.; "Post Mortem Imbibition of Poison," by Henry A. Mott; "Post Mortem Imbibition of Poison," by Prof. Witthaus; "Mecroneuropathy," by Chas. H. Hughes, M. D.; "Life Insurance," by Daniel Jordan, Esq.; "The Pathology of Death by Electricity," by P. E. Donlin, M.D.; "Supplementary Report of Committee on Insane in County Institutions," with letter from Dr. H. O. Jewett, of the local Committee for Cortland Co.; "The Province of Medical Expertism," by Judge C. G. Garrison; "Hypnotism," by Clark Bell, Esq.; Delirium Tremens as a Defence to Criminality," by T. Crisp Poole, Esq., of Brisbane, Queensland, aside from the papers read before the International Medico-Legal Congress in June, 1889.

The further notable labors of the body may be briefly stated, being by far, the most important of any previous year since the founding of the Society.

1. Holding an International Congress at Steinway Hall, New York City, June 4th, 5th, 6th and 7th, followed by a banquet, the proceedings of which will be published in a Bulletin of which about 200 pages have been completed, recording the labors of the body and the leading papers read before it, and the names of 370

of the members, which roll is constantly increasing; as men of science from all the world are enrolling in the organization, now made a permanent one, with its next Session fixed for the Universal Exposition year 1892.

2. The Third Illustrated Edition of MEDICO-LEGAL PAPERS, Series 1, has been completed, an edition limited to 1,000, which was issued in June, 1889. A volume of over 600 pages on heavy paper with illustrations.

3. The volume of PRIZE ESSAYS contributed in 1888, in competition for prizes offered by Elliott F. Sheppard, Esq., and the Society, which will be ready for delivery by April 1st next, if not before, as it is printed and in the binder's hands.

4. The organization of a committee of prominent persons throughout the State, in relation to the care and condition of the insane in county institutions, with local committees in various counties of the State now being appointed, with careful selections.

5. The issuing of a series of groups of the portraits of members of the Medico-Legal Society, or of the International Medico-Legal Congress, in a style and of a size suitable for framing or preserving in portfolios.

6. The completion of the work of Nationalization of the body, with Vice-Presidents in each of the States of the Union, and providing for such officials in all foreign States, Provinces and Countries.

7. By a large increase of membership outside of the State and City of New York, and notably in foreign countries, embracing men of the highest judicial positions in France, Denmark, Austria, the American States, and in several of the British Colonies; and men of the highest scientific attainments in chemistry, in medicine, and in science, in our own and in foreign countries.

Of Judges of the Supreme Courts. We have enrolled

Chief-Justice Bermudez, of La.; Chief-Justice Sir John C. Allen, of New Brunswick; M. Barbier, President of the High Court of Cassation of France; M. Kunousky, President of the Supreme Court of Breslau; Judge Somerville, of the Supreme Court of Ala.; Judge A. L. Palmer, of the Supreme Court of New Brunswick; Judge Montgomery, of the Supreme Court of Washington, D. C.; Judge C. G. Garrison, of the Supreme Court of New Jersey; Judge L. A. Emery, of the Supreme Court of Maine; Hon. W. S. Ladd, ex-Judge of the Supreme Court of N. H.; and Judges Wm. H. Francis, of Dakota, Lock E. Houston of Miss.; Judges A. A. Gumby of La., J. C. Normile of St. Louis; George H. Sanders of Ark., Judge R. W. Westbrook, of Phila.; and Judge Goldfogle, of New York.

It would occupy too much time and space to enumerate the many Superintendents of Asylums, and men of distinction in both professions, home and foreign, who have united with the body upon our active list.

8. The various Standing Committees will be announced later.

9. A prize of \$100 was offered by the President of the Society, and of \$75 and \$50 by the Society for first, second and third best prizes, which closed Dec. 31, 1889, and the Committee will pass upon these competitions, when time is given for the receipt of those mailed in foreign countries.

THE PROGRESS OF THE SCIENCE.

The coming year opens the closing decade of the century. The foundations are laid for great advances in Medical Jurisprudence in the remaining years before 1900. The mission of this body and its field has been greatly enlarged, and widened, and broadened.

This Society has become national, and it is upon the threshold of international labors.

The International Congress of 1892 will be by far the most significant and important step in medical jurisprudence of our era. We will need the intervening years for preparation, for a convocation which shall bring contributions from all lands.

Men of the highest eminence in both the professions, and scientists are enrolling their names, not only as members of the International Congress, now made a permanent organization, but as active members of the Medico-Legal Society.

Vice-Presidents of this Society have been elected from most of the American States, and from many Foreign States, Provinces and Countries.

The International Congress will aim to have representatives from all civilized nations and peoples, with a Vice-President in and from each.

Papers will be contributed from many countries, some of which have already been promised.

As fast as the titles are furnished they will be published in the **MEDICO-LEGAL JOURNAL**.

The Medico-Legal Societies of Philadelphia, and of Chicago, are in a most flourishing state. Each have a large list of members, and the papers read before them are notable and important contributions to the science. The Massachusetts Medico-Legal Society has contributed a published collection of its papers on arsenical poisoning, of great scientific importance and value, and the Rhode Island Medico-Legal Society is doing good work.

A Medico-Legal Society is about to be formed at Denver, Colorado, by prominent gentlemen of both professions, among whom are Dr. J. T. Eskridge, formerly Professor of Mental Medicine in Philadelphia, Pa.,

Chief-Justice Helm of the Supreme Court of that State District-Attorney Stevens, Hon. Thomas Patterson and Mr. Wycoff of the Bar of Denver, Drs. Kimball, Fisk, McLanthlin, Lerneen, Mr. Gauze and the Rev. Myron Reid.

FOREIGN.

Belgium.—A Medico-Legal Society has been formed, composed of about thirty-six members selected from the *medicine legists* of that country, of which Doctor Vleminckx has been elected president. The Bar of Belgium has not thus far been identified with this Society as active members.

Italy.—It is under advisement by leading men of science in both professions to found a society of medical jurisprudence, which will take form doubtless during the coming year.

France.—Has during 1889 attracted the attention of men of science in all branches at her great Exposition.

The Congress of Medical Jurisprudence was an important gathering, held August 19th to August 24th, at the Faculty of Medicine.

Prof. Brouardel, President of the Medico-Legal Society of France, was President of the Committee on Organization.

The Vice-Presidents were : M. Horteloup, ex-President of that body, a distinguished jurist, and M. Demange, of the same profession, and member of the Council of Fordre.

The Secretary was Dr. Motet, General Secretary of the French Medico-Legal Society, and the other Secretaries were Drs. Leblond, Lutaud and Socquet.

The official delegates were :

From the *Medico-Legal Society of New York*.—Clark Bell, Esq., Chief-Justice Bermudez and H. A. Mott, Jr.

From the *Belgian Medico-Legal Society*.—Dr. Vleminckx and Dr. Camile Moreau, President and Secretary of that body.

From *Belgium*.—Prof. Dr. Stiénon of the University of Brussels, and Hon. Alfred Moreau of the Belgian Bar.

From *Brazil*.—Dr. Pires Garcia, of Rio Janiero, Dr. Joao Conrado of Niemeyer.

From *Spain*.—Dr. Nicusio Mariscaly Garcia (Madrid).

Denmark.—Løgeforeningen for Kjobenhoonag Omgyn (Copenhagen).

Sandwich Islands.—M. de Varigny.

Italy.—Prof. Lombroso, of Turin.

Mexico.—Sig. Rafael de Zayas Enriques, Manuel Flores, Sig. Edouard E. Zabate, José Ramirez.

Monaco.—Doctor Coulon.

Paraguay.—Doctor Hassler.

Peru.—Dr. Muniz, of Lima.

Roumania.—Dr. Soutzo, Doctor Iscovesco.

The following is a list of the papers contributed and officially announced :

Prof. Lacassagne, “De l’Examen Méthodique des Petites Filles Victims d’Attentats à la Pudeur.”

Dr. Coutagne, “Anatomie et Physiologie Pathologique de la Pendaison.”

Dr. Camille Moreau, Charleroi Belgium, “De la Simulation.”

Dr. Duponchel, “Examen des Simulateurs, &c., des Règles Nouvelles à Adapter dans cet Examen.”

Dr. Semal, Mons. Belgium, “La Prison-Asile pour Criminels Alienés et Instinctifs.”

Dr. Maurice Langier, “Fracture of the Humerus, Notes on, etc.”

Dr. Garnier, “Le Criminel Instinctifs et les Droits de la Defense Sociale.”

Clark Bell, Esq., "L'execution par l'Electricité des Condamnés a Mort en Amerique."

The programme also embraced the discussions of several very important questions on which reports were made by eminent men, prepared in advance and submitted to the Congress.

This movement gave a great impetus to forensic medical studies on both Continents, and while Germany, Russia and England took no prominent part in the labors, the scientists of all the world will feel the current of scientific thought thus engendered.

The Paris Congresses on Mental Medicine, on Criminal Anthropology, on Hypnotism and on various of the sciences Germane to our studies, drew to the French capital scientific men from all countries, and reflected great credit upon France, and added new lustre to the real renown which her men of science have won for her in our country.

England.—There has been suggestions made in the London *Lancet* favoring the formation of a Medico-Legal Society in England. It is under consideration as we learn. The medical men are willing. The doubt is, will the Bar of England and the Judiciary of England, take hold of this work and realize in Great Britain the hopes of the students of the science by the formation of a Medico-Legal Society in the British Islands.

THE WORK OF THE COMING YEAR.

The responsibility of the coming year involves great responsibilities and requires more than ordinary exertion.

1. To complete the work of nationalization so as to embrace all states, countries and provinces not now

represented in the Society and to select vice-presidents for each.

2. To complete the labors of the various standing committees.

3. To bring to the attention of the colleges and universities where law and medicine are taught; to the law and medical schools; and to the State and National Bar Associations and the State and National Medical Associations; the importance not only of establishing a chair of medical jurisprudence in every such school, but to make it obligatory on each graduate to pass an examination in forensic medicine before graduation.

4. I need not rëenumerate the various special subjects to which your attention was brought last year, and which I still strongly reccommend.

Finally, now that we have a membership of over 750 in the various classes of our members, and are destined in the near future to swell this number to 1,000, we should enter upon this opening year of the closing decade of our century with greater zeal and energy than we have hitherto shown in the past.

Thanking you for the kind and cordial support that has been offered by one and all to the chair, in the various and arduous duties of the past, I feel all the more confident of its continuance, as we commence the more exacting duties of the coming year.



Hon. George C. Rogers
Chief Justice of Vermont.



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Chief Justice of Vermont.

Portraits of the Chief Justices of the Supreme Courts of some of the American States, and British Colonies included in the Saturday Night Club to meet the Supreme Court of Pennsylvania.

April 5, 1854, authorship.

Published by the United Loyal Journalists.

SPIRITUALISM AND TESTAMENTARY CAPACITY.

The decision of Van Vleet, Justice in Middleditch vs. Williams in New Jersey, is very interesting.

The will was made by the testator under the belief that its provisions were desired and directed by the spirit of his deceased wife, communicated through a medium.

The learned judge holds the following propositions:—

1. That a will may be contrary to the principles of justice and humanity, yet if there was testamentary capacity, and no fraud or undue influence, the will must be upheld.
2. That believing a thing upon false evidence, or insufficient evidence, is not an insane delusion.
3. That an insane delusion is where a person conceives something extravagant to exist which has no existence, something which springs up spontaneously in the mind, and is not the result of evidence of any kind.
4. That mania does not *per se* vitiate any transaction, for the question is whether such transaction has been affected by it.
5. That belief in Spiritualism—that is, that the spirits of the dead can and do communicate with the living—is not an insane delusion.

The Scotch *Journal of Jurisprudence*, in commenting on the case says :

The will was upheld—rightly so, as we think. Wordsworth was a shallow reasoner when he wrote,—

"I look for ghosts, but none will force
Their way to me. 'Twas falsely said
That ever there was intercourse
Between the living and the dead;"

which just comes to this: I never communed with a spirit, therefore, nobody else ever did. In the present state of human knowledge, it would be monstrous to hold the impossibility of such an experience as a fact so firmly established that a belief in its occurrence is an insane delusion. In the case in point, indeed, there was strong evidence of the reality of the supernatural persuasion, for, if married men are to be believed, representations in favor of the mother-in-law, are just what were to be looked for from the spirit of a deceased spouse, and no one, except under the influence of such representations, would have made a will in favor of his mother-in-law. Indeed, the wrong ground of challenge seems to have been chosen, for to make a will in favor of one's mother-in-law, even in obedience to the entreaties of a deceased wife, would be held by many to argue a want of testamentary capacity.

We look at this question from a different standpoint. If a testator should be controlled in the disposition of his estate, by what he believed to be the spirit of a deceased wife, communicated through a medium, it would be the duty of the court to carefully investigate the "medium."

Supposing the medium or her family took the benefit of the legacies. The element of fraud and of undue influence would or might interfere.

The 3d and 4th propositions of the learned Judge should be more carefully considered. We do not like this judicial definition of an insane delusion. It is very difficult to decide where mania is conceded, how far and to what extent the transaction, or the action, has been dominated by it.

Most people and judges, would consider such a mandate from a departed wife as a fraud. Most would call it a delusion. It may not be an insane delusion, but we all shrink from conceding that a mind thus influenced and dominated, is a free agent, and all now suspect, both fraud and undue influence.

Such a mind cannot be well styled as "of free and disposing mind and memory."

✓

MEDICAL MEN IN CHARGE OF PRIVATE ASYLUMS.

The State Board of Lunacy of New York have adopted the following resolution :

Resolved, that hereafter no license for the establishment and keeping of an asylum or institution for the care, treatment or custody of the insane or persons of unsound mind, for compensation or hire, shall be granted, except to a duly qualified medical practitioner of recognized professional skill and standing, who is a graduate of a legally incorporated medical college and has had actual experience in the care and treatment of the insane.

A medical man should be responsible for the administration of every asylum for the insane, or rather a man skilled in such affairs. We know many medical men wholly unfit and incompetent to manage an insane asylum. We realize the importance of having a competent medical man to be responsible for the proper care and treatment of the insane, in an institution. I should prefer the Earl of Shaftesbury to be the keeper of a private asylum with a good medical man as consulting or visiting physician, rather than see half the physicians we meet, who are incompetent to manage an asylum, placed at the head of one, simply because they were M.D's.

The resolution is timely, because it will stop incompetent and improper persons opening private asylums. The Board will be likely to ask something more of an applicant as to his qualifications, than merely whether he holds a diploma as a physician from some medical college.

The British system of competitive examinations, for the certificate as qualified to treat the insane, would be a still higher and more valuable step.

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INSANITY AS A DEFENCE IN PENNSYLVANIA.

George S. Graham, LL.D., the able and accomplished District Attorney of Philadelphia, has contributed a very important and interesting paper to the compendium of the Lunacy Laws of that State under the above-heading published by the Committee on Lunacy of the Pennsylvania State Board.

He cites the decisions and dicta of the Judges of Pennsylvania in the two great and leading cases, those of Taylor and of Sayre, and his review of the legal questions as decided in the Courts of Pennsylvania are valuable contributions to the legal student, of the law of that State.

There is a strong bias in his paper against medical expert testimony, that we regret to see, in one so learned, able and conscientious, and which we feel is most unjust to medical men and medical experts especially.

Mr. Graham assumes that medical men are subject to criticism regarding a particular case, which he thus characterizes.

“To secure the acquittal of the prisoner seems to be the paramount purpose.” While this may be true of one expert in an isolated case, it is not the position of medical men in general, and it is only just to say, would be so only in rare and exceptional cases.

We quite agree with Mr. Graham, in deprecating the practice of permitting young and inexperienced medical men to testify as experts in cases of homicide.

Medical men *per se* are not experts *per se*. Very far



Chief Justice
Hon Charles B. Andrus



Judge Elizur C. and



The State House of Maryland



Judge Elisha Capuler



Judge David Torrance



Judge Edward M. Ellsworth

Supreme Court of Connecticut
from the
annual meeting Club of New York
April 5 1890

from it, and the courts would so hold, if the point was taken and pressed. Three important faults underlie the assumed premises, of the position taken as to insanity and responsibility in this otherwise admirable paper.

1. There is a difference between an insane delusion which dominates and controls the action of an insane person, and a mere delusion which affects the sane or the insane mind similarly.

Both sane and insane minds may rest under delusions, but whether the insane delusion, be of such a character as to dominate the will and action of the accused, *in reference to the act*, is the crucial test of criminal responsibility.

2. No amount of moral degeneration, or vice, which has become unresisted or irresistible ever excuses crime. The second-nature criminal may have irresistible impulses to steal, rob and commit crime. The light of science shines upon the path and clearly marks the boundary line of crime and vice in him, who dominated by an insane delusion, which controls the conduct and dominates the will, commits an act which lacks all the essential elements of crime. Chief Justice Gibson states the law correctly when he says in Commonwealth vs. Mosler, 4 Barr. 266. "It (insanity) must amount to delusion or hallucination controlling his will, and making the commission of the act a duty of overruling necessity," and again: "The law is that whether insanity be general or partial it must be so great as to have controlled the will of its subject, and to have taken from him the freedom of moral action."

There is hardly room for fear that conscientious medical men should fail to discriminate between "human depravity," and that disease of the brain, which leaves to the experienced student of mental medicine, scarcely

room for doubt of its existence, when studied carefully by both its symptoms and its manifestations.

3. The real, the profound error of the learned District Attorney is in his erroneous view of insanity itself. Is it an actual disease of the brain capable of being recognized, traced, treated, cured even? we quote Mr. Graham :

In view of all these differences, and difficulties, it is not surprising that judges everywhere, with wonderful unanimity, while recognizing insanity as a defence, have narrowed the inquiry to the one point of "responsibility."

The question is not one of insanity, but of responsibility. Men may be insane in a medical sense and yet responsible in a legal sense. They may entertain delusions, have impulses to commit crimes, and be what are commonly called cranks, or peculiar people; and yet, possessed of intelligence enough to distinguish right from wrong and able to restrain themselves, be liable to the penalties of broken laws. "When the state of a prisoner's mind at the time of the commission of a given offence is the point at issue, it is only to ascertain and settle the question of his responsibility or irresponsibility.

Medical men differ widely from lawyers in the views which they take upon this question of responsibility, or the "right and wrong" test. The former protest against what they are pleased to term the unjust criterion of responsibility sanctioned by law; while the latter protest against the fanciful theories of medical men who seldom fail to find insanity when they earnestly look for it.

and again :

The question of insanity, using this term in its popular sense, is a mixed question of law and fact.

While experts may be called to testify as to the states of mind and conditions of health, it is for the courts to declare whether such states and conditions constitute irresponsibility, ss. 190, 191, 192 and 193, vol. 1 of Wharton & Stille's Med. Jur.

Upon reason and authority which space will not permit to be discussed here, this must ever be the rule.

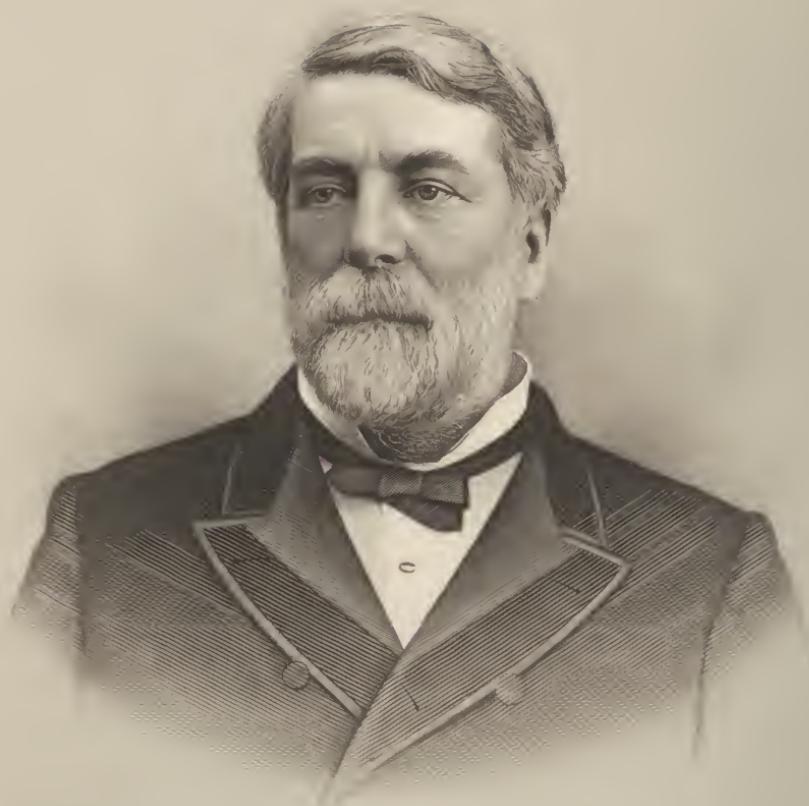
With all respect and deference to this very high authority, here lie the real faults of this, otherwise admirable paper. Whether the disease exists, its nature, manifestations, character, sequela, is not a question of law. It is not a mixed question of law and of fact. It is pure and simple a question of fact, to be determined

like any other question of fact, upon the evidence by the jury. Upon this question, only entirely competent and skilled experts, should be allowed to testify, except as to actual positive facts, concerning which all witnesses are competent.

The knowledge of right and wrong, either in the abstract, or in regard to the act committed, knowledge of its character and consequences, even may exist, as in the case of Guiteau, and possibly, though not probably, in the case of Dr. Beach (at the moment of the killing), then even in the language of Judge Gibson, "If it (the insanity) was so great as to have controlled the will and taken from him the freedom of moral action," by the law of Pennsylvania the accused would not be responsible, and in cases of moral insanity under the law of that State, as announced by the court, Mr. Chief Justice Lewis pronouncing the opinion, "we say to you as the result of our reflections on this branch of the subject, that if the prisoner was actuated by an irresistible inclination to kill, and was utterly unable to control his will, or subjugate his intellect, and was not actuated by anger, jealousy, revenge and kindred evil passions, he is entitled to an acquittal."

It is time to consider insanity from the higher plane of the law, as announced by the Supreme Court of Alabama, in that masterly opinion written by Mr. Justice Somerville in Parsons vs. the State, holding that the right and wrong test as commonly construed upon the dicta of the English judges, was not the safe rule of determining the criminal responsibility of the insane, reaffirming the strong, powerful, and to this moment, the unanswerable argument, of Mr. Chief Justice Doe, voicing the decision of the Supreme Court of New Hampshire, more than two decades ago, against the reason and jus-

tice of such a rule, which has found responses in the judicial utterances of Pennsylvania and Kentucky, and other States, and later in Michigan, where it is recognized as a legal proposition, that insanity is a disease, the existence and character of which must be determined as a fact in legal tribunals passing upon the responsibility of the insane who commit homicides.



Edw^o M^r Dickerson

LUNACY LEGISLATION IN NEW YORK.

Several important subjects in Lunacy Legislation will be brought to the attention of the Legislature, and are already before it.

1. Very radical legislation proposed by the Board of Lunacy Commissioners amendments to the act creating that Board, some of which are good and some of doubtful propriety. The original act was faulty and needs amendment in important particulars, some of which are not noticed in the proposed legislation. A Committee has been named by the Medico-Legal Society to consider this subject, and the suggestions of that Commission and report.

2. The Lunacy Bill which passed the last legislature and which failed to receive the Governor's signature, is again pressed by its authors.

This Bill has been severely criticised in the medical press, and is so full of incongruities and faults, that it will doubtless fail as it did last year. It should not pass in its present form.

3. The old contest between State and County Care of the Insane is again renewed the present Session.

With the State Institutions crowded beyond their utmost capacity, it would seem ill advised now, to close such County Institutions as those of Broome, Cortland, Jefferson, Monroe, Oswego, Herkimer, Lexington and other counties where the county care is on a plane nearer those of the State Institutions, because of evils in other counties not as well provided for.

The proposed legislation exempts the County Institu-

tions in New York, Kings and Munroe Counties. Not upon any principle involved, but because such legislation would be quite out of question, as to New York and Kings Counties.

We incline to the opinion that this Bill will meet the same fate as did last year's similar measure. Meanwhile, the local committees of the Medico-Legal Society are at work in many of the counties of the State, to elevate the county care, and meet the exigencies of the present law as the best thing to be done at the moment.

The Reports from Broome, Cortland, Livingston, Otsego and some other counties, would indicate that good work was being done, and the insane well cared for in many counties of the State.

The kindly and best care of the insane, should command our most profound sympathies. If evils exist in County Institutions, we should by all means seek to remedy them.

We may do much to lessen and mitigate these evils where they do exist. There are several remedies. We are not compelled to adopt the one idea of sending all to State Institutions, even if we had enough to send them all to. It is a great question. There are more insane persons in the State, under restraint outside of State Institutions than inside them, and there is scarcely a vacant place in the State Institutions at this moment.

Massachusetts is trying a plan, to place the insane in families in the country, not after the Belgian colony system at Gheel and Liernieux, nor after the Scotch system of boarding them out, nor after the German colony system, but upon a plan thought to be more in accord with the wants, needs, situation and training of Americans and New England Americans. The State officials say it is working well.

Perhaps a similar plan would work well in New York. Should it be tried? Should it be considered? Legislation may reach the evil in the County Institutions, where it exists. The proposed bill might not reach or remedy it, as now proposed. The Legislative Committee is not the best tribunal in the world, to pass upon such measures. The members are crowded and overwhelmed with the mass of bills. Only a few men in the legislature have considered these problems. Those most competent to pass upon them, may not be upon the committees having these bills in charge.

The whole situation demands the ablest thought and work, of the best minds of the State. The practical solution would be to name a commission to revise the Lunacy Laws, as did Pennsylvania. Place men on it who would serve without compensation, except as secretary and clerks, and inside of two years a complete and harmonious working Lunacy System for the State could be submitted to the Legislature, combining the wisdom and experience of the ablest men of the State.

All important legislation can best be done by such commissions.

That was the course adopted in England, in France, in Italy, and everywhere that careful and enlightened lunacy legislation is secured.

The time is now ripe for such a commission, and it is the best practicable solution of our lunacy problem.

*THE CORONER'S OFFICE, SHOULD IT BE ABOLISHED?**

By CLARK BELL, Esq.

MR. PRESIDENT AND GENTLEMEN OF THE MEDICAL SOCIETY OF THE STATE OF NEW YORK: In responding to the request of your officers, to address this body upon the important topics of needed reforms in the laws of this State, regarding the office of CORONER, I take great pleasure in laying before you some of the facts and circumstances that have led to this discussion, and to explain the reasons which have led me to appeal to your powerful association for the moral support of the medical profession of the State, in a movement in which that profession has more at stake and will gain as much as the people at large, if the movement meets with that success its importance and merits demand.

At the request of the Medico-Legal Society of New York, I had the honor at its last session to submit to that body my views upon this subject.

The executive committee of that society, at its later and very recent session, appointed Prof. Frank H. Hamilton and myself to lay the subject before your society, and to ask your aid in a movement to effect the necessary changes in the existing laws.

The courtesy of your invitation is due to these circumstances, but your meeting was so close upon the session of our executive committee that I was unable to appear at an earlier hour in your session.

Read before the Medico-Legal Society, January, 1881.

Read before the State Medical Society, February, 1881.

Read before the International Medico-Legal Congress, June, 1889.



John C. Allen

The whole subject of the office of Coroner, and of procedure under the laws regulating that office, and defining its powers and duties, has been made the subject of discussion, for a few years past, and has awakened public interest, both in England and the various States of the American Union.

The attention of the British public was most pointedly called to it by the admirable address of Mr. Farrer Herschell before the British Science Association, at Liverpool, in October, 1876, and public interest in this country soon followed.

The discussion was practically opened in America by an address made by Mr. Theodore H. Tyndale, of the Boston Bar, before the Department of Health of the American Social Science Association, which appeared shortly after in the Boston *Medical and Surgical Journal*, of March 1, 1877.

This gentleman, with the co-operation of a few others, and the powerful aid of the State Medical Society of Massachusetts, carried that discussion before the State Legislature in a general proposition to make a complete revolution in their system, which was substantially like our own, as inherited from our English ancestry and traditions which had handed down that strange creation of the past, the office of coroner, and what has sometimes been facetiously called "crownner's quest law."

It is not too much to say that mainly through the efforts of Mr. Tyndale, and of such gentlemen as he could bring to his aid, that discussion resulted in the adoption by the Legislature of Massachusetts, of an entirely new system, which can best be explained by the law itself, which passed on May 9, 1877, and which as follows :

AN ACT to Abolish the Office of Coroner, and to Provide for Medical Examinations and Inquest in Cases of Death by Violence.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 1. The offices of coroner and special coroner are hereby abolished.

SEC. 2. The Governor shall nominate, and by and with advice and consent of the council shall appoint, in the county of Suffolk not exceeding two, and in each county not exceeding the number to be designated by the county commissioners as hereinafter provided, able and discreet men, learned in the science of medicine, to be medical examiners; and every such nomination shall be made at least seven days prior to such appointment.

SEC. 3. In the county of Suffolk, each medical examiner shall receive in full for all services performed by him, an annual salary of three thousand dollars, to be paid quarterly from the treasury of said county; and in other counties they shall receive for a view without an autopsy, four dollars; for a view and autopsy, thirty dollars, and travel at the rate of five cents per mile to and from the place of the view.

SEC. 4. Medical examiners shall hold their offices for the term of seven years from the time of appointment, but shall be liable to removal from office at any time by the Governor and council for cause shown.

SEC. 5. Each Medical examiner, before entering upon the duties of his office, shall be sworn and give bond, with sureties, in the sum of five hundred dollars, to the treasurer of the county, conditioned for the faithful performance of the duties of his office. If a medical examiner neglects or refuses to give bond as herein required, for the period of thirty days after his appointment, the same shall be void, and another shall be made instead thereof.

SEC. 6. The county commissioners in each county shall, as soon as may be after the passage of this act, divide their several counties into suitable districts for the appointment of one medical examiner in each district under this act; and when such division is made, shall at once certify their action to the secretary of the Commonwealth, who shall lay such certificate before the Governor and council. But nothing herein shall prevent any medical examiner from acting as such in any part of his county.

SEC. 7. Medical examiners shall make examinations as herein-after provided, upon the view of the dead bodies of such persons only as are supposed to have come to their death by violence.

SEC. 8. Whenever a medical examiner has notice that there has been found or is lying within his county, the dead body of a person, who is supposed to have come to his death by violence, he shall forthwith repair to the place where such body lies and take charge of the same; and if on view thereof and personal inquiry into the cause and manner of the death, he deems a further examination necessary, he shall, upon being thereto authorized in writing by the district attorney, mayor, or selectmen of the district, city or town where such body lies, in the presence of two or more discreet persons, whose attendance he may compel by subpoena, if necessary, make an autopsy, and then and there carefully reduce or cause to be reduced to writing every fact and circumstance tending to show the condition of the body, and the cause and manner of death, together with the names and addresses of said witnesses, which record he shall subscribe. Before making such autopsy, he shall call the attention of said witnesses to the position and appearance of the body.

SEC. 9. If upon such view, personal inquiry, or autopsy, he shall be of opinion that the death was caused by violence, he shall at once notify the district attorney and a justice of the district, police, or municipal court for the district or city in which the body lies, or a trial justice, and shall file a duly attested copy of the record of his autopsy in such court, or with such justice, and a like copy with such district attorney; and shall in all cases certify to the clerk or registrar having the custody of the records of births, marriages and deaths in the city or town in which the person deceased came to his death, the name and residence of the person deceased, if known, or a description of his person as full as may be for identification, when the name and residence cannot be ascertained, together with the cause and manner in and by which the person deceased came to his death.

SEC. 10. The court or trial justice shall thereupon hold an inquest, which may be private, in which case any or all persons other than those required to be present by the provisions of this chapter may be excluded from the place where the same is held; and said court or trial justice may also direct the witnesses to be kept separate, so that they cannot converse with each other until they have been examined. The district attorney, or some person designated by him, may attend the inquest and may examine all witnesses. An inquest shall be held in all cases of death by accident upon any railroad, and the district attorney or the attorney-general may direct an inquest to be held in the case of any other casualty from which the death of any person results, if in his opinion such inquest is necessary or expedient.

SEC. 11. The justice or district attorney may issue subpoenas for witnesses, returnable before such court or trial justice. The

persons served with such process shall be allowed the same fees, and their attendance may be enforced in the same manner, and they shall be subject to the same penalties as if served with a subpoena in behalf of the Commonwealth in a criminal prosecution pending in said court or before said trial justice.

SEC. 12. The presiding justice or trial justice shall, after hearing the testimony, draw up and sign a report in which he shall find and certify when, where, and by what means the person deceased came to his death, his name, if known, and all material circumstances attending his death; and if it appears that his death resulted wholly or in part from the unlawful act of any other person, he shall further state, if known to him, the name of such person, and of any person whose unlawful act contributed to such death, which report he shall file with the records of the superior court in the county wherein the inquest is held.

SEC. 13. If the justice finds that murder, manslaughter, or an assault has been committed, he may bind over, as in criminal prosecutions, such witnesses as he deems necessary, or as the district attorney may designate, to appear and testify at the court in which an indictment for such offence may be found or presented.

SEC. 14. If a person charged by the report with the commission of any offence is not in custody, the justice shall forthwith issue process for his apprehension, and such process shall be made returnable before any court or magistrate having jurisdiction in the premises, who shall proceed therein in the manner required by law. But nothing herein shall prevent any justice from issuing such process before the finding of such report if it be otherwise lawful to issue the same.

SEC. 15. If the medical examiner reports that the death was not caused by violence, and the district attorney or the attorney-general shall be of a contrary opinion, either the district attorney or the attorney-general may direct an inquest to be held in accordance with the provisions of this act, notwithstanding the report, at which inquest he, or some person designated by him, shall be present and examine all the witnesses.

SEC. 16. The medical examiner may, if he deems it necessary, call a chemist to aid in the examination of the body, or of substances supposed to have caused or contributed to the death, and such chemist shall be entitled to such compensation for his services as the medical examiner certifies to be just and reasonable, the same being audited and allowed in the manner herein provided. The clerk or amanuensis, if any, employed to reduce to writing the results of the medical examination or autopsy, shall be allowed for his services two dollars per day.

SEC. 17. When a medical examiner views or makes an examination of the dead body of a stranger, he shall cause the body to be

decently buried; and if he certifies that he has made careful inquiry, and that to the best of his knowledge and belief the person found dead is a stranger, having no settlement in any city or town of this Commonwealth, his fees with the actual expenses of burial shall be paid from the treasury of the Commonwealth. In all other cases the expenses shall be paid by the city or town, and all other expenses by the county wherein the body is found.

SEC. 18. When services are rendered in bringing to land the dead body of a person found in any of the harbors, rivers, or waters of the Commonwealth, the medical examiner may allow such compensation for said services as he deems reasonable, but this provision shall not entitle any person to compensation for services rendered in searching for such dead body.

SEC. 19. In all cases arising under the provisions of this act, the medical examiner shall take charge of any money or other personal property of the deceased, found upon or near the body, and deliver the same to the person or persons entitled to its custody or possession; but if not claimed by such person within sixty days, then to a public administrator, to be administered upon according to law.

SEC. 20. Any medical examiner who shall fraudulently neglect or refuse to deliver such property to such person within three days after due demand upon him therefor, shall be punished by imprisonment in the jail or house of correction not exceeding two years, or by fine not exceeding five hundred dollars.

SEC. 21. The medical examiner shall return an account of the expenses of each view or autopsy, including his fees, to the county commissioners having jurisdiction over the place where the examination or view is held, or in the county of Suffolk to the auditor of the city of Boston, and shall annex thereto the written authority under which the autopsy was made. Such commissioners or auditor shall audit such accounts, and certify to the treasurer of the Commonwealth, or the treasurer of the county, as the case may be, what items therein are deemed just and reasonable, which shall be paid by said treasurer to the person entitled to receive the same.

SEC. 22. Whenever any sheriff is a party to a suit or proceeding, or otherwise disqualified to act therein, the sheriff or a deputy sheriff of any adjoining county may serve and execute all writs and precepts and perform all duties of such sheriff which he is disqualified to perform, and may serve and execute all such writs and precepts wherein any county, town, parish, religious society, or school district is a party or interested, notwithstanding he is at the time a member of such corporation.

SEC. 23. Whenever a vacancy occurs in the office of sheriff of any county, the senior deputy sheriff in service shall perform all the duties required by law to be performed by the sheriff, until the office of sheriff is filled in the manner required by law, giving bond as

now required by law of sheriffs. And in case of such vacancy, the deputies of the sheriff vacating the office shall continue to have and exercise the power of deputy sheriffs until said office is filled as aforesaid.

SEC. 24. Sections seventy-five, seventy-six and seventy-seven of chapter seventeen, and section one hundred of chapter sixty-three, and section eighteen of chapter one hundred and sixty-three of the General Statutes are hereby amended by substituting for the word "coroner," wherever the same occurs, the words "medical examiner," and for the word "coroners" the words "medical examiners." The second clause of section fifty-two, and sections seventy-four, seventy-eight, seventy-nine and eighty of chapter seventeen of the General Statutes, chapter one hundred and seventy-five of the General Statutes, chapter one hundred and thirteen of the acts of year eighteen hundred and sixty-one, chapter one hundred and seventy-two of the acts of the year eighteen hundred and sixty-two, chapter twenty-eight of the acts of the year eighteen hundred and sixty-four, chapter two hundred and forty-one of the acts of the year eighteen hundred and seventy-one, and chapter one hundred and fifteen of the acts of the year eighteen hundred and seventy-six, and all other acts and parts of acts inconsistent herewith are hereby repealed.

SEC. 25. For the purposes of the appointment and qualification of medical examiners and the action of the county commissioners herein provided for, this act shall take effect upon its passage, and it shall take full effect on the first day of July next.

The radical changes made by this act in Massachusetts were three-fold.

1. The abolition of the office of coroner;
2. The dispensing wholly with juries on the preliminary inquiry in this class of cases as unnecessary; and
3. The adoption of a new system, by which a competent medical man took charge of the medical part of the investigation, and an arrangement for proper officials to take charge of the legal and statutory aspects of such cases, where the death was in any wise proper to be made the subject of a legal inquiry, preliminary to the final trial of the accused, after indictment.

Under this change, Massachusetts appointed medical examiners for the several districts of the State, who took

charge of the new system, and were appointed by the Governor and council; their labors collected by the Medico-Legal Society of Massachusetts (composed wholly, so far as active members were concerned, of these officials), furnish an admirable view of the results of a peculiarly fortunate attempt in a sister State to provide an intelligent and practicable substitute for an acknowledged faulty system, quite as bad and cumbersome as our own.

A comprehensive view of the subject can best be had by examining briefly the leading objectionable features of our present system before we need consider how we can best remedy them.

THE PRESENT STATUTE POWER—DUTIES OF THE CORONER'S OFFICE.

In this State the office of coroner is elective, and held for three years. Coroners are not required to give bonds except when acting as sheriffs, when they may be required to do so.

Four coroners are elected in each county in the State, and in the city of New York the mayor is empowered to designate one to each senatorial district of that city, and assign him to duties therein. Coroners must be residents of the county in which they are elected. They may be removed for cause by the Governor.

They are authorized to arrest those who disturb religious meetings; to take charge of wrecks and wrecked property, to take measures for the preservation thereof; and for its delivery to the proper owners.

They are authorized to investigate into the origin of fires, by an inspection and inquest, with a jury, with proceedings like in most respects the inquests in case of sudden death, with power to arrest, in case there is

found to have been arson, or an attempt at arson, committed.

Whenever a coroner receives notice that any person has been slain, has suddenly died, been dangerously wounded, or found dead under such circumstances as to require an inquisition, the coroner is required to proceed to the place where the body lies, to forthwith summon a jury of not less than nine nor more than fifteen, to appear forthwith to make inquisition concerning such death or wounding.

The coroner swears in the jury, summons witnesses to appear before them, presides at the inquest, swears the witnesses and reduces their testimony to writing, which is subscribed by the witnesses.

It is the duty of the coroner to summon some surgeon or physician to appear as a witness on such inquest.

The jury then inspect the body, hear the testimony, and deliver to the coroner their inquisition in writing, which the law requires shall contain their finding, as to

1. How and in what manner, and when, and where the person so dead or wounded came to his death or was wounded ; and

2. Who such person was, and all the circumstances attending such death or wounding ; and

3. Who, if any, were guilty of the same, either as principals or accessories, and in what manner.

The finding or inquisition of the jury, with the evidence of the witnesses, the coroner is required to return to the next criminal court of record in the county.

The coroner has power, on the finding of the jury that a crime has been committed, to bind over the witnesses to appear, and to issue warrants for the arrest of accused or suspected persons.

In case of the absence or inability of the coroners to

act, in the city of New York, any alderman or special justice may act in his stead, exercising the same powers and duties as the coroner. Special legislation has been enacted, from time to time, for the city and county of New York, making the practice there different from other parts of the State, and containing many objectionable provisions, mixed with much that is good and commendable.*

The law makes it the duty of coroners to hand over to the treasurer of the county all moneys or valuables found on the bodies of persons on whom inquests have been held, which have not been claimed by the legal representatives within sixty days after the inquest has been held.

The law makes no requirement as to professional knowledge or skill for the incumbent of the office, and does not require the coroner to summon a surgeon or physician who has superior knowledge as to the matters involved, leaving it wholly in the discretion of the coroner as to what surgeon or physician he may call, except in the city of New York, and calls him when summoned simply as a witness and as other witnesses are summoned before the jury.

The Governor has power to remove for misconduct in office on charges.

By analyzing our present system we will observe that if the object of an inquest should be to detect the existence or commission of crime in cases of death by violence, or sudden death, our law, as now constituted, is not well adapted for the purpose.

1. Of what practical good is the verdict of a coroner's jury on an inquest in such a case?

Is it binding, or even influential on the accused, on

* See "Note" at end of Address.

the grand jury, or on the final trial ? Everyone knows that it is not.

It is quite true to say that it is a useless and unnecessary expense to summon jurymen in such cases, and in no case can it help the State or the accused on the final trial, which must still occur before conviction.

We cannot be too jealous of the right of trial by jury, but in all cases under existing law two juries must agree before any person can be convicted of crime, without counting the coroner's jury, viz : the grand jury which presents the indictment, and the jury on the trial of the accused after indictment ; so that the abolition of the jury on the preliminary inquiry, and a change as to who shall make the inquest in its stead, is not in any sense true an infringement upon the right of trial by jury, which in all cases would exist if the proposed change was made.

It is a useless hardship on the citizen to be liable to be called on a coroner's jury, and the work of investigation can be done much better and easier by competent medical officials to investigate the medical questions involved, holding them responsible for the work, carefully providing for a thorough and practical examination ; and by proper judicial officers, that part of the business which requires legal proceedings, adjudication or decision as to whether a crime has been committed.

There can probably be no more startling evidence of the utter uselessness of a coroner's jury, than the statement of this fact : That whatever may be the verdict in a given case, the subsequent indictment, trial, and entire judicial proceeding is absolutely independent of it, and proceeds as if the coroner's jury had never acted at all.

The object of an inquiry when a sudden death has oc-

curred, should be to inquire into the cause of the death. Did it proceed from natural causes ? If not, from what cause, and has a crime been committed ? That is, and should be, the full scope of such an inquiry.

That such an investigation is proper, preliminary to a formal accusation is certain, because it determines, or should do so, that no trial is necessary, if the death is not by violence or is due to natural causes ; and it is due to all that an intelligent and careful scrutiny should be given by competent persons, in all cases, whether doubtful or not at first.

Whether death has resulted from other than natural causes is usually a matter to be determined by a careful, competent, and thorough medical examination.

Whether a crime has been committed is not a medical question ; it is rather a legal one.

What is, therefore, most needed, at once, in all such cases, is a formal and careful medical examination, by a perfectly competent medical man, upon the first inquiry, and to decide upon the facts by a careful scientific inquiry as to the cause of death.

The Massachusetts system provides an officer for that duty, and requires him by the terms of the law to be "an able and discreet man, learned in the science of medicine," to be even eligible to hold the office.

The law compels this learned and competent officer to examine the body ; and if on such examination, and after personal inquiry into the cause and manner of the death, he deems further examination necessary, he shall, on the written authorization of the district attorney, or other competent judicial authority, proceed in a specified careful way to make an autopsy in the presence of at least two discreet persons, and then *and there to carefully reduce to writing every fact and circumstance* tend-

ing to show the condition of the body and the cause and manner of death, together with the names and addresses of said witnesses, which he shall subscribe, and for which he is, of course, officially and professionally responsible.

If on this inquiry this officer, after such an examination, autopsy, and certificate, shall be of the opinion that the death was caused by violence, he is commanded to notify the competent judicial authority, and file his report and certificate with the court, who shall thereupon proceed to investigate whether a crime has been committed—which is a legal or judicial question—under certain provisions of the law, and under due legal forms, with all the force and effect of a judicial proceeding.

Under our present system the coroner can call in any medical man, whether he is skilled in the examination required or not, in most counties of the State.

What is the necessity or value of a jury's opinion, or verdict, upon the medical question as to whether the death was by violence or from natural causes ; or, on the second question, as to whether a crime has been committed, which is a judicial question ; and how much more valuable would be the carefully-prepared written statement and autopsy of the competent medical man, as a permanent record in the case ; or the finding of the competent judicial officer, upon evidence, in case and where it is held that a crime has been, or even probably has been committed, with the careful record of the facts and circumstances attending the death ?

The opinion, report and autopsy of the medical man upon the medical question is valuable throughout the whole case, and in all subsequent phases of it.

The report, evidence and finding of the judicial officer, as to whether a crime has been committed, is also of

value, but the verdict of a coroner's jury on either question, under our existing system, seems practically absurd, and experience has shown it to be both meaningless and valueless. Then why continue it?

There is no race of men more wedded to their traditions, past, and precedents than the Anglo-Saxon and their descendants. We inherit that peculiar trait of English character which makes us cling to the things and ways our fathers had and did before us. We are the last to see the absurdity of an old thing, gray with age, though quick to find it in a new.

With the venerableness of the office of coroner we have little to do, but it is a source of absolute wonder how such an absurd and valueless office for the detection of crime should have been continued through all these centuries.

So far as his duties in case of acting in the place of the sheriff, or against the sheriff, or in regard to matters of wrecks, deodands, and forfeitures to the crown, which were his ancient duties, these are now obsolete, except in regard to the sheriff, and powers in certain other cases which would be wisely placed in some one officer in a county, but beyond that, there is no use or necessity for such an officer as the statute makes our present coroner, and the progress of events and civilization demands for us a change in this part of our system.

Before proceeding to examine into the system and practice of other countries, it might be well to ask you to look at some of the fatal defects in our own.

1. There is no existing provision compelling a careful and proper medical examination and autopsy, the absence of which, in doubtful and difficult cases, might result, and frequently does, in the entire defeat of justice.

If an autopsy is to be taken at all, in a given case, it is usually of great importance that it be promptly done, and by competent medical authority.

It would not be enough that our system provided for an autopsy. It should in all cases, when the circumstances seem to require, compel it, and provide how it should be made, and what it should certify.

2. Again, any citizen is now eligible to the office of coroner, and no precaution or safeguard is had under the law to secure an officer who is either competent to conduct the medical examination or the legal inquiry.

Most lamentable cases of ignorance of this official fill our books, and occur on all hands in practice.

The history of criminal jurisprudence in our country, as well as of England, is full of cases where most serious consequences result from the inexperience and ignorance of incompetent persons taking charge of the medical investigation as to the cause of death, or the later legal inquiry whether on the shown medical facts a crime has been committed.

In extremely doubtful cases where crime has been committed, as, for example, by poisoning, especially where very difficult to positively detect, the present system of inquest would, or might, actually prevent detection and subsequent conviction, by not having the proper medical examination and autopsy, which, if properly taken would have insured detection.

The heart, lungs, stomach, intestines, and liver frequently are decisive witnesses in such cases ; and how many times would such an examination and autopsy have prevented the terrible consequences of an innocent person, accused of poisoning by suspicious or jealous relations or enemies, being placed on trial, and, as

we know, sometimes actually convicted of a crime they never committed or contemplated.

These delicate, difficult, and doubtful cases, where nothing but the highest character of scientific knowledge and critical examination at the time of the occurrence would detect the crime, are of course lost, and the guilty escape ; and these cases the books do not show, because the real facts and circumstances do not appear, and the real record is never made.

3. The existing statute, in failing to secure a competent officer to conduct the medical examination, thus shown to be indispensably necessary in every case where a crime has been committed, or even to determine whether the death is probably from natural causes, is as faulty in making no provision for a competent person to conduct a necessary legal inquiry, as to whether a crime has been committed, in those cases where the death is clearly from violence, and not from natural causes.

The existing statute throws this inquiry upon a jury, who, in the nature of things, cannot determine it judicially, and who can only conduct an inquiry upon competent evidence, with an official presiding who is not required by the law to be competent to conduct such an inquiry.

And we have gone on thus for centuries, taking the verdict of coroners' juries in these cases—absolutely valueless judicial farces, oftentimes attended with lamentable and fatal results.

In the case of William Simmons, charged with homicide, the coroner's jury, on a full hearing, pronounced the killing justifiable homicide, the prisoner having been assaulted with a deadly weapon, and having defended

himself with a knife, killing his assailant while in a death struggle on the floor.

The court, however, on the trial, held against the use of a knife, even in such an extremity ; and Simmons was convicted. But the Governor pardoned on the merits, though the sentence was nearly out. The verdict of the coroner's jury had not the slightest legal force or effect.

Provisions should be made, therefore, in the law regulating such investigations, for a proper judicial proceeding before a competent court and officer, which should be a proper, legal and necessary step toward the trial itself.

This is secured under the new Massachusetts law by directing the proceeding to be taken before a justice of the district, police, or municipal court in which the body lies, or a trial justice, which is conducted for the State by the district attorney of the county, or by some person designated by that officer.

4. If the existing law could be amended by dispensing with a jury in such cases ; providing for a competent medical officer to conduct the preliminary examination under distinct methods, that would secure a record of these necessary medical facts, to answer fully the medical inquiry, with a proper provision for examination before a competent judicial tribunal in case the medical preliminary examination made that necessary, or probably so ; it would be a great gain to our present system, even if we called the medical officer by the old name of coroner. But there are so many absurdities under that system that it would doubtless be wiser, if it was decided to make a change, to abolish the office of coroner altogether and provide for the new system by appropriate legislation, attaching those duties in respect to sheriffs,

wrecks, etc., to some other officer, as, for example, the district attorney in counties, or the county treasurer; or perhaps for constitutional reasons to leave the coroner to discharge them when occasion arose.

It may be well in such an inquiry to examine the laws of other countries and their practice under them.

FRANCE.

In France two distinct and separate officers take charge of all such investigations.

The legal officer, the *procureur du roi*, or, as he is now called, the procurer or attorney of the republic, analogous in some respects to our district attorney, proceeds to the place where the dead body is found, makes the investigation, summons and examines witnesses, and reduces their evidence to writing, which is subscribed.

He has large power granted him as to seizing articles or papers, if connected with crime, and can restrain suspected persons from leaving the premises or the neighborhood. He has power to use experts or clever detectives, which is a part of the French system for the detection or discovery of crime. He is responsible for the case as a legal inquiry, and for all the legal questions involved.

The medical side is in charge of a medical officer, chosen for his superior and excellent medical knowledge, with almost equal powers, supreme as to the medical examination, inquiry, and all medical questions involved; and this officer—and sometimes two—is connected also with the subsequent prosecution of the criminal when a crime has been committed, or the legal officer decides that one has been committed.

The admirable writings of Emile Gaboriau well describe the powers, duties, and responsibilities of these

various officers, and the excellent working of what may be called the French system, in such works as "File No. 118," "Monsieur Le Coq," "The Widow Lerouge," and other admirable works from his prolific pen.

I have thought it would interest the thoughtful student of this subject to give a *résumé* of the laws of France recently adopted upon this subject, in which I have received valuable assistance from my brother and colleague, Mr. Fred. R. Coudert, of our Bar.

The investigation of crimes, such as murder, and the preliminary investigation to establish the culpability of the murderer in case of violent death, in France, is one of the duties of the attorney of the Republic.

The duties and powers of the attorney of the Republic are defined in the Code of Instruction in Criminal Proceeding, Book I., Chapter IV., Section II., Articles 29 to 47, included. Among these articles, the following have especial reference to the investigation and proof of crime and the arrest of the guilty persons.

"ART. 32. In all cases of *flagrante delicto*, when the act shall be of such a nature as to entail punishment of a degrading or ignominious character, the attorney of the republic shall himself proceed to the spot, without any delay, for the purpose of drawing the official reports which may be necessary to establish the evidence of crime, its condition, that of the surroundings, and to receive the declarations of the persons who shall have witnessed the deed, or who shall be able to give information thereon, etc.

"ART. 33. The attorney of the republic may also, in the case of the preceding article, summon such of the relatives, servants, or neighbors, as are able to give information upon the fact. He shall receive their statements, which they shall sign. The statements made in conformity with the present and the preceding article, must be signed by the parties, and in case of refusal, mention of it is to be made.

"ART. 36. The attorney of the republic shall seize the weapons, and all that shall appear to have been used, or have been intended to have been used for the commission of the crime, or the offence, as well as all that may have resulted therefrom, and, in fact, all that may throw light on the subject; he shall ask the accused party

to account for the things so seized, which shall be shown to him; he will draw up an official report, which shall be signed by the accused, or mention shall be made of his refusal to do so.

“ ART. 40. The attorney of the republic in such a case of *flagrante delicto*, and when the crime shall be of such a nature as to entail a degrading or ignominious punishment, shall arrest the accused persons present, against whom strong presumption may be entertained.

“ If the accused is not present the attorney of the republic shall issue an order to compel him to appear. This order is called ‘ *Mandat d'amener*. ’ The information alone does not constitute sufficient presumption to authorize the issuance of such a warrant against a domiciled person.

“ The attorney of the republic shall at once examine the accused brought before him.

“ ART. 42. The official reports of the attorney of the republic, in pursuance of the preceding articles, shall be made and drawn up in the presence, and shall be signed by the commissary of police of the ‘ Commune ’ in which the crime or offence shall have been committed, or the mayor or the assistant mayor, or by two citizens domiciled in the same ‘ Commune . ’ ”

“ Nevertheless, the attorney of the republic may draw up the official reports without the assistance of witnesses when there is no possibility of obtaining them at once.

“ Each sheet of the official report shall be signed by the attorney of the republic, and by the persons who shall have been present, in case of their refusal or inability to sign, mention shall be made thereof.

“ ART. 43. The attorney of the republic shall be accompanied, if necessary, by one or more persons who may be presumed by their trade or profession to be capable of appreciating the nature and the circumstances of the crime or offence.

“ ART. 44. If a violent death shall have taken place, or a death from unknown causes, or under suspicious circumstances, the attorney of the republic shall be assisted by one or two physicians, who shall make their report as to the cause of the death, and the condition of the corpse.

“ The persons who shall be summoned in the cases provided by the present and the foregoing articles, shall before the attorney of the republic be sworn to make their report and give their opinion according to honor and conscience.

“ ART. 45. The attorney of the republic shall, without delay, transmit to the examining magistrate the official reports, instruments, documents, and weapons drawn up or seized in pursuance of the preceding articles, to be proceeded with as set forth in the chapter entitled, ‘ Of Examining Magistrates; ’ and in the meanwhile

the accused shall remain at the disposal of the judicial authorities, so that he can at any time be arrested.

“ART. 47. Except in the cases provided for in articles 32 and 46, the attorney of the republic, upon being notified by information or otherwise, that a crime or an offence has been committed in his district, or that a person charged with the commission thereof is in his district, shall call upon the examining magistrate, to order an inquiry, and even, if necessary, proceed to the spot in order to draw up all the necessary official reports, as will be found described in the chapter entitled, ‘Of Examining Magistrates.’”

When the papers have been transmitted by the attorney of the republic to the examining magistrate, the latter holds an investigation. His powers and duties are defined in the code of Examinations in Criminal Proceeding, Book F, Chapter VI., Articles 55 to 90.

The following articles in particular explain the mode of proceeding in case of murder.

“ART. 49. In all cases reported as *flagrante delicto*, the examining magistrate may directly, and of his own authority, perform all the acts attributed to the attorney of the republic, by observing the rules defined in the chapter ‘Of Attorneys of the Republic and their Substitutes.’ The examining magistrate may require the presence of the attorney of the republic, without any delay, however, as to the operations defined in said chapter.

“ART. 61. Except in cases of *flagrante delicto*, the examining magistrates shall make no investigations, and take no proceedings without informing the attorney of the republic thereof, who may, moreover, require this information to be furnished him at all stages of the investigation, subject to the obligation of returning the papers within twenty-four hours.

“The examining magistrate, however, if there be occasion for it, may issue the warrant to produce the person, and even the warrant of commitment, without its being necessary that they have been preceded by the legal conclusions of the attorney of the republic.

“ART. 62. Where the examining magistrate proceeds to the spot, he shall always be accompanied by the attorney of the republic, and the registrar of the tribunal.

“ART. 71. The examining magistrate shall summon before him such persons as shall have been indicated by information, by complaint, by the attorney of the republic, or otherwise, as having knowledge of the crime or offence, or of the circumstances.

“ART. 87. The examining magistrate shall, if required to do so, and even of his own accord, proceed to the domicile of the party



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charged with the crime or the offence, in order to make a search for the papers, effects, and generally, all articles which shall be deemed necessary for arriving at the truth.

“ART. 88. The examining magistrate may likewise proceed to such other places as it is likely that articles like those mentioned in the preceding section shall have been concealed.”

Articles 91 to 112 regulate the rights of the examining magistrate to issue orders to apprehend (*comparution*), orders of commitment (*depot*), orders to produce the person (*d'amener*), and orders of arrest (*d'arrêt*).

Articles 113 to 126 regulate provisional release and release on bail.

Articles 127 to 136 regulate the orders to be issued by the examining magistrate when the investigation is terminated.

“ART. 133. If the examining magistrate considers the deed as one entailing punishment of a degrading or ignominious character, and that the evidence against the accused is sufficiently established, he will order that the papers in the proceedings, the official report establishing the nature of the offence, and a list of exhibits, shall be transmitted without delay by the attorney-general of the ‘Cour d'Appel,’ in order that they may be used as specified in the chapter ‘On Indictments.’

“The exhibits shall remain with the court where the examinations took place, with the exceptions set out in articles 228 and 291.”

The indictment is regulated in Book, II., Title II., Chapter I., Articles 217 to 250.

The trial before the Assize Court is regulated by Book II., Title II., Chapters II., III. and IV., Articles 251 to 380.

And the jury is formed and works under the same code, book, and title, Chapter V., Articles 381 to 406.

GERMANY.

The present law of the German Empire, adopted October 1, 1879, being the code of criminal procedure (*Straf-Process Ordnung*) regulates proceedings for this class of cases for all Germany to-day.

A judicial officer called the district attorney (*staatsanwalt*) has charge of these proceedings. He is clothed with powers as full as those of our district attorney, of a committing magistrate, or a police justice. He is entitled to ask information from all public authorities, who are bound to assist him in his official duties. The police are his subordinates, and under his control in all respects in the investigation of crime.

The police authorities are also bound on their own account to investigate supposed crimes, and report to this officer, especially in all cases of sudden death or death by violence ; and in these cases no interment of the body is allowed until after the consent has been obtained of the district attorney or the competent court.

There is no coroner in Germany, nor any analagous officer ; nor any jury on the preliminary examination.

There are judicial district physicians or surgeons regularly appointed who are selected for their special training and fitness for the duty. They are summoned by the district attorney, or by the police authorities, and examine the body, make the autopsy, and conduct in all respects the medical examination.

The code prescribes a form or set of special rules for the conduct of the judicial examination of the body (*gerichtliche leichenschau*), which occur under a special order of the court ; and the code also provides how and in what cases and manner experts may be called in by the district attorney or the police magistrate.

The grand jury and its indictments as in our system, is unknown in Germany.

If the district attorney, after the preliminary examination and inquisition has been made, and the evidence and medical examination and report made, believes that a crime has been committed, or that probable cause ex-

ists for such a belief, he brings on the trial by a motion to the competent court, and if the court, on such motion, after hearing the case, believes that sufficient reasons are presented, it orders a preliminary judicial investigation (*gerichtliche voruntersuchung*), which is conducted before a justice, with the assistance of the district attorney, at which the accused is heard, and is represented by counsel if he desires. The result of that preliminary investigation usually determines the matter. If the district attorney desires to press it, he moves it on ; if not, the case is usually dropped.

SCOTLAND.

Scotland has gone off from the English system, and an officer analogous to the French *procureur du roi*, called a procurator fiscal, performs the duties of the preliminary inquiry investigation, much as if our district attorney was charged with the preliminary inquiry, with large powers of taking testimony and making arrests, but acting without a jury.

TURKEY.

In Turkey, if a death occurs in a town where there is a foreign consul, the deceased not being a native of or citizen of Turkey, the consul or legation of the nationality of the deceased takes charge of the investigation, in such manner and form as each consul chooses, acting for his own country.

If it is a citizen that dies, there is no investigation, nor any officer even analogous to our coroner.

If the case presents aspects which justify an official or other interference, the police take it in charge. They conduct the inquiry, and investigation as a judicial proceeding, calling witnesses, experts, and medical aid as they see fit.

These deaths are regarded more lightly in Turkey than in most European countries, and nothing resembling our inquest is known.

GREECE.

In Greece the system in force is almost identical with that of France.

An officer analogous to the French *procureur du roi* takes charge of the legal side and conducts the proceedings.

A medical officer takes exclusive charge of the medical question and examination, and detectives or experts trained to the business are subject to the call of the prosecuting officer.

RUSSIA.

The whole proceeding is in Russia placed in the charge of a judicial officer known as Judge of Instruction. He is an officer of the crown, appointed in and for each district by the central governor, or council of the province or state.

He repairs to the place and takes charge of the body of the deceased. Has power to seize all papers and correspondence, and put seals on the private papers and boxes. He summons and examines all witnesses, takes the evidence, reduces it to writing, calls experts, and examines and directs their action. He is clothed with large powers, and may arrest, and even place in close confinement an accused or suspected person.

He stands for the state as an accuser, and yet is bound in honor and conscience to act as a judge, and to act impartially for the accused.

The medical questions and the medical side of the case are in charge of a physician or surgeon who is a sworn crown officer, with a salary. He acts in conjunction with the Judge of Instruction, but independ-

ent of him. He is bound to make an autopsy, if any suspicion or doubt exists as to crime.

He conducts the autopsy, and carefully reduces his examination and conclusions to writing, which he furnishes to the court, and also to the central medical council or board, held in every province at the seat of the government, who have a power of review of the same, in case doubt exists.

Since the year 1864, in each village of Russia, certain citizens are designated by the mayor of the village, whose duty it is to attend such cases at the summons of the *Juge d'Instruction*, aid him in the investigation by their inquiries, give evidence of the known facts, search for evidence in doubtful cases, and help so far as they can in the investigation.

They are not, however, clothed with any powers. They make no finding nor report, but are required by law to attend, and stand as a sort of watch to the proceedings, aiding the officials of the crown in the discharge of their duties.

DENMARK.

In Denmark the State is divided into several large districts, some seventeen in number. These are subdivided into smaller districts, or counties, in each of which a judicial officer, analogous to our county judge, is appointed, who has power over such cases.

He acts without a jury, possesses the powers of a coroner and police magistrate combined, is both prosecuting officer and judge, and if the cause proceeds to trial finally, it is before this officer.

No counsel is allowed on the preliminary investigation, even if a person is accused. This officer can

make arrests, but the accused can only be held twenty-four hours without a hearing.

In the seventeen larger districts there is a judicial officer who has superior jurisdiction over the county officer, to whom the latter reports all the proceedings.

If the district judge orders the trial to proceed, it goes on before the county judge ; if not, it is usually abandoned.

In each county is also a medical officer, appointed by the crown, with a salary, who examines the medical questions on the call of the county judge, conducts the autopsy and scientific examination, reports in writing to the county judge, and also to the central bureau of eminent physicians, called the Royal Bureau of Health. This bureau, in each district, reviews his action, and in doubtful cases take action, as in cases of poisoning or insanity, their report being made to the county judge, in writing, is usually decisive, of any issue they pass upon.

The county medical officer is first consulted on all medical questions, and is supreme except as to the review of his action by the royal health bureau.

The district officer frames the indictment, if one is found, and orders the trial to proceed before the county judge. An appeal lies first to the superior court in each district ; then to the supreme court of Denmark.

In reaching a conclusion satisfactory to ourselves it may not be uninteresting to pursue our inquiry into the

EXPENSES OF THE PRESENT SYSTEM, AND ECONOMY OF THE CHANGE.

If it be true that the verdict of a coroner's jury has no practical value, in determining the guilt or innocence of an accused person, it may well be said that the cost of

summoning the jury, and the fees and expenses of the jurymen would, of course, be wholly saved by its abolition.

In the inquiry before the legislative committee of Massachusetts, a carefully prepared statement was made as to the expenses of the then existing system and that under the one finally adopted, and it was clearly shown that the saving in expense to the State, not taking into account the time of the jurymen, was fully thirty-three per cent. in favor of the proposed change.

Mr. Tyndale, in answer to my inquiry as to the saving to the State of Massachusetts on the trials made there, under the change, reports that he had gathered facts enabling him to make a careful statement of the expenses attending coroner's inquests throughout the State of Massachusetts under the former law, and also the workings of the new system, and that the saving to the Commonwealth in jurors' fees, constables' fees for summoning jurors, amounts to full one-third of the former expenses, while the results of the scientific inquiries now made are of great value, as the testimony is secured exactly and early in the proceedings before time and decay have made it difficult or impossible to obtain it ; that where the State of Massachusetts formerly paid about twenty thousand dollars annually for scientific work under the old system, with which absolutely nothing was done—the money being virtually thrown away—it now gets its first important steps taken in criminal investigations, attended to by thoroughly competent men for about one-third less than before.

There can be no higher authority on this inquiry in that State than Mr. Tyndale, nor one who has more reliable sources of information; but on the occasion of my recent visit to Boston, as a delegate from the Medico-

Legal Society of New York, to the annual meeting of the Massachusetts Medico-Legal Society, I took the opinion of Dr. Alfred Hosmer, then the president of the society, and later, Dr. Robert Amory, now occupying that chair, both medical examiners under the new law, and thoroughly familiar with the statistics upon this question, and both place the economy to the State in the actual saving of expenditure at thirty-three and one-third per cent. in favor of the new system.

There is one other consideration having an important bearing upon this branch of the inquiry that was not considered by these gentlemen, or embraced in their estimate of saving. It is this: Under the old system, if scientific evidence was called by the State, autopsies made, or chemical evidence taken on the preliminary inquiry, it was of no value whatever on the final trial. If now taken, as indeed it must be, if necessary, it is of value ; it has its direct relation to the case, is an important and valuable part of its record and history ; and in these cases, when medical experts are called, the saving under the new system would be something great in any case, and in all doubtful and obscure ones.

It may, I think, therefore be affirmed in this discussion, without fear of contradiction, that a change in our law would be a very great economy to the State in both these important respects.

There have been some suggestions as to a chief officer and subordinates, which I regret to have heard made. They come from a too superficial view of the subject.

In the nature of things the officers throughout the State must needs be county officers ; and they should have, of course, co ordinate powers.

If in our change we do not provide for entirely com-

petent and trained men for the work we had better not change.

An examiner-in-chief who should have control for the State, with assistants for the counties, would be simply an incongruity, and a failure.

It needs the same competent person to provide for all the work being well done, in one district that it does in in another.

There is no country in the world that attempts such a plan. Co-ordinate powers to the officers, executing those within defined districts, would be the only successful plan.

Again, let it not be forgotten that under the Massachusetts law the medical examiner takes no part in the judicial branch of the inquiry. That is placed in well-defined judicial hands.

It would be as faulty to place the legal side of such a proceeding in the hands of a merely medical man, as it would to provide for a lawyer to make an autopsy, or to certify whether the death was probably due to natural causes.

A competent physician would, even under our present law, be a much better coroner than the ordinary officer, because if trained in the branch of medical knowledge involved, he would be more competent to discharge the duties involved in that part of the inquiry. But he would not be as competent as even our present coroner to conduct the other duties of that office, by reason of his education, which unfits him for judicial duties.

The reforms needed in our system may be summarized as follows:

1. The abolition of the coroner's jury, or of any jury on the preliminary investigation as useless, expensive, and not calculated to discover or detect the commission

of crime, if one has been committed, or the best method of determining whether the death was by violence or from natural causes.

2. Such a change of our law, as shall place the examination of the preliminary medical inquiry, whether the death is due to natural causes or to violence, in charge of a medical man of special knowledge on such subjects, who shall be obliged to conduct an autopsy, with power to call witnesses, and to make scientific record of the facts and circumstances of the case substantially like that provided under the law of Massachusetts.

3. The proper method of conducting the legal inquiry as to whether a crime has been committed, if the report and examination of the medical examiners make it necessary, and defining the proper officer to conduct, and the tribunal to hear and decide it.

The district attorney of the county, or some person to be designated by him, would probably be a perfectly safe provision in our State.

Courts of justices of the peace in various counties, and of the police justices in the cities, would be the proper judicial tribunals under our system. As constituted, they are competent to take charge of such proceedings, which should, of course, be a legitimate preliminary step for the discovery and punishment of crime in all cases.

4. If a medical man was not selected to take charge of the preliminary inquiry, as in Massachusetts, and the whole inquiry placed, as in France, in charge of a legal officer who should be of the degree of counselor at law ; then, that competent medical men, selected by reason of their training and skill in this class of cases, should be designated by competent authority, such as the county judge in counties, and the chief justices of the supreme,

superior and common pleas courts in cities, of sufficient number to do the work, acting upon a salary, and sworn, as public officers, to act upon their best judgment, honor, and conscience in such cases, when called by the district attorney or other officer conducting the legal proceedings.

For practical work I believe the better change, considering our system, would be the adoption of the Massachusetts plan. It has been tried there, it works well, it could easier be carried into effect, would, I think, give greater public satisfaction, and be of greater public good.

The important obstacle is the question of how the medical examiners should be selected.

Under our system how could we so frame the law as to have these officers selected by reason of their professional fitness for the place, and without reference to political considerations ?

If thought dangerous to make the office elective ereh it would certainly be safe to have them appointed, either by the governor, by and with the consent of the senate, or by the county judges in the counties, and the chief justice of the common pleas in this city, an office anala-gous to that of county judges in counties.

If the appointments were made by the governor and senate, there might be danger of political considerations influencing the appointments, rather than the peculiar fitness of the man for the office, which, perhaps, might be guarded against in the law itself to some extent.

The success of the Massachusetts plan has been due to the care the governor has taken there to select men for their peculiar fitness for the office, and wholly ignoring the political affinities of the men selected.

Governor Long, of Massachusetts, is entitled to the highest praise for his action in this respect, and his predecessor also ; and if we could be sure of similar action by our executive, I know of no safer way than to allow the executive to appoint ; but, with past experience, it would doubtless be safer to give the appointment to the county judge of counties, and provide in the law that they shall be made without regard to political considerations, and only by reason of the competency of the officer, by his education and training for the office.

THE CONSTITUTIONAL QUESTION.

There are those who seek to avoid the discussion of this question upon its merits, on the ground that the coroner is an officer created by the constitution, and cannot, therefore, be abolished.

There are two ways of regarding this objection:

1. If it were true that the defects of our present system could only be remedied by an amendment to the constitution, it would be a perfectly proper subject for discussion to inquire whether the public good would be subserved by such a change, and then take the proper course to change the constitution by amendment.

Our duty now is to inquire whether a change is desirable, and to carefully investigate the subject on its merits; to examine how the Massachusetts system works; to examine such proceedings in other countries; and to determine what is best for us in this State to do in such matters. The people will never find difficulties they cannot surmount, if they decide to change, in any question, even if it is constitutional.

2. To my mind, however, no amendment to the constitution is necessary to effect the proposed reforms.

such as are given by the legislature in laws enacted from time to time upon the subject.

It is absolutely necessary that some officer should be designated to act as sheriff in cases where the sheriff was incompetent to act, by reason of being a party.

The provision as to wrecks, investigating into the cause and origin of fires are good provisions, and the coroner's office might retain to take charge of these when occasion arose.

Legislation which took from the coroner all control of, or connection with cases of death by violence, or sudden death, providing new officers and methods, could be passed without conflicting with the constitution, by a simple repeal of certain existing statutes, and the passage of acts conferring these powers upon officers to be appointed by competent authority.

The abolition of the coroner's jury is certainly not in conflict with the constitution.

The creation of an officer charged with defined duties and powers, in matters of this kind is certainly not in conflict with the constitution.

The power of the legislature to define and extend the powers and duties of coroners involves the right to diminish their powers and duties as well as to enlarge them : and if the whole business of inquests and conducting investigations in the class of cases now under consideration was taken by legislation from the present coroner and placed either under such a system as that adopted by Massachusetts, or that in vogue in France or Germany, the coroner's office would still exist ; but with restricted powers ; and the constitution would be inviolate. The opinions of the Supreme Court of Massachusetts upon analogous questions, are, I think, conclusive

While the constitution provides for the election of four coroners in each county of the State by the people, the powers, duties, and all the authority of those officers are upon the legal questions involved. [Vol. 117 Mass. Rep., p. 603 ; 1 Gray Rep. p. 1.]

The special legislation for the city and county of New York is so important for the proper understanding of the subject that the various laws are hereby collected and given for general information of the subject.

The general statutes for the State on the subject of the office of coroner are as follows:

Title VII, Article First, Chapter II., Page 1039, Banks & Bros.' Sixth Edition Revised Statutes.

" SECTION 1. Whenever any coroner shall receive notice that any person has been slain, or has suddenly died, or has been dangerously wounded, or has been found dead under such circumstances as to require an inquisition, it shall be the duty of such coroner to go to the place where such person shall be, and forthwith to summon not less than nine nor more than fifteen persons, qualified by law to serve as jurors, and not exempt from such service, to appear before such coroner forthwith, at such place as he shall appoint, to make inquisition concerning such death or wounding. [Laws of 1847, ch. 118, § 1.]

" SEC. 2. Any justice of the peace in each of the several towns and cities of this State, is hereby authorized and empowered, in case the attendance of a coroner cannot be procured within twelve hours after the discovery of a dead body, upon which an inquest is now by law required to be held, to hold an inquest thereon, in the same manner and with the like force and effect as coroners.

" SEC. 3. In all cases in which the cause of a death is not apparent, it shall be the duty of the justice to associate with himself a regularly licensed physician, to make a suitable examination for the discovery of said cause.

" SEC. 4. Each and every justice of the peace who shall hold inquests by virtue of this act, shall receive the same fees as are now allowed by law to coroners.

" SEC. 5. Whenever six or more of the jurors shall appear, they shall be sworn by the coroner to inquire how and in what manner,

and when and where, such person came to his death or was wounded, as the case may be, and who such person was, and into all the circumstances attending such death or wounding; and to make a true inquisition, according to the evidence offered to them, or arising from the inspection of the body. [As modified by § 2 of ch. 118, of Laws of 1847.]

“ SEC. 6. The coroner shall have power to issue subpœnas for witnesses, returnable either forthwith or at such time and place as he shall appoint therein; and it shall be the duty of the coroner to cause some surgeon or physician to be subpœnaed to appear as a witness upon the taking of such inquest.

“ SEC. 7. Every person served with any such subpœna shall be liable to the same penalties for disobedience thereto, and his attendance may be enforced in like manner, as upon subpœnas issued in justices' courts.

“ SEC. 8. The jury, upon the inspection of the body of the person dead or wounded, and after hearing the testimony, shall deliver to the coroner their inquisition in writing, to be signed by them, in which they shall find and certify how and in what manner, and when and where, the person so dead or wounded came to his death or was wounded, as the case may be, and who such person was; and all the circumstances attending such death or wounding, and who were guilty thereof, either as principal or accessory, and in what manner.

“ SEC. 9. If the jury find that any murder, manslaughter, or assault has been committed, the coroner shall bind over the witnesses to appear and testify at the next criminal court, at which an indictment for such offence can be found, that shall be held in the county. And in such case, if the party charged with any such offence be not in custody, the coroner shall have power to issue process for his apprehension, in the same manner as justices of the peace.

“ SEC. 10. The coroner issuing such process shall have the same power to examine the defendant as is possessed by a justice of the peace, and shall in all respects proceed in like manner.

“ SEC. 11. The testimony of all witnesses examined before a coroner's jury shall be reduced to writing by the coroner, and shall be returned by him, together with the inquisition of the jury, and all recognizances and examinations taken by such coroner, to the next criminal court of record that shall be held in the county.

“ SEC. 12. In case of the absence of the coroners of the city and county of New York, or their inability to attend, from sickness or any other cause, at any time, any alderman or special justice of the city may perform, during such absence or inability, any duty appertaining to the coroners of the said city, under this article; and such

alderman or justice shall possess the like authority, and be subject to the like obligations and penalties as the said coroners. [As modified, Laws of 1852, ch. 289.]

“ SEC. 13. The coroners of the several counties in this State are hereby required to deliver over to the treasurer of their respective counties, all moneys and other valuable things which have been or may hereafter be found with or upon the bodies of persons on whom inquests have been or may hereafter be held, and which shall not have been claimed by the legal representatives of such person or persons, within sixty days after this act becomes a law, in cases of inquests heretofore held; and in cases which may hereafter arise, within sixty days after the holding of any such inquest; and in default thereof, the said treasurer shall be authorized and required to institute the necessary proceedings to compel such delivery. [Laws of 1842, ch. 155, § 1.]

“ SEC. 14. The several treasurers to whom any such valuable thing shall be delivered, pursuant to the provisions of this act, shall, as soon thereafter as may be, convert the same into money, and place the same to the credit of the county of which he is treasurer; and if demanded, within six years thereafter, by the legal representatives of the person on whom the same was found, the said treasurer, after deducting the expenses incurred by the coroner, and all other expenses of the county in relation to the same matter, shall pay the balance thereof to such legal representatives. [Same ch., § 2.]

“ SEC. 15. Before auditing and allowing the accounts of such coroners, the supervisors of the county shall require from them, respectively, a statement in writing containing an inventory of all money and other valuable things found with or upon all persons on whom inquests shall have been held, and the manner in which the same has been disposed of, verified by the oath or affirmation of the coroner making the same, that such statement is in all respects just and true, and that the money and other articles mentioned therein have been delivered to the treasurer of the county, or to the legal representatives of such person or persons. [Laws of 1842, ch. 155, § 3.]

“ SEC. 16. The said coroners shall be entitled to receive a reasonable compensation for making and rendering such statement, and for their trouble and services in the preservation and delivery of said effects and property, as hereinbefore provided; and all reasonable expenses incurred by them in relation thereto, to be audited by the board of supervisors, in addition to the fees or compensation to be allowed by them for holding an inquest.” [Same ch. § 4.]

The special acts relating to the city of New York are as follows:

By Laws of 1871, chapter 462, it was enacted as follow:

" SECTION 1. Hereafter when in the city and county of New York, any person shall die from criminal violence, or by a casualty, or suddenly when in apparent health, or when unattended by a physician, or in prison, or in any suspicious or unusual manner, the coroner shall subpoena a properly qualified physician, who shall view the body of such deceased person externally or make an autopsy thereon as may be required. The testimony of such physician and that of any other witnesses that the coroner may find necessary, shall constitute an inquest. For making said external examination the physician shall receive three dollars; for making such autopsy he shall receive ten dollars, and such sums shall be a county charge, and be paid by the board of supervisors.

" SEC. 2. Should the coroner deem it necessary, he may call a jury to assist him in his investigation, or should any citizen demand that a jury be called, he shall proceed as directed by part four, title seven, article one, of the Revised Statutes.

" SEC. 3. It shall be the duty of any citizen who may become aware of the death of a person who shall have died in the manner stated in section one of this act, to report such death forthwith to one of the coroners, or to any police officer, and such police officer shall, without delay, notify the coroner of such death; and any person who shall wilfully neglect or refuse to report such death to the coroner, shall, upon conviction, be adjudged guilty of a misdemeanor, and shall be punished by imprisonment in the county prison not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

" SEC. 4. Any person, except the coroner, who shall wilfully touch, remove, or disturb the body of any one who shall have died in the manner described in section one of this act, or who shall wilfully touch, remove or disturb the clothing, or any article upon or near such body, without an order from the coroner, shall, upon conviction, be adjudged guilty of a misdemeanor, and shall be punished by imprisonment in the county prison not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

" SEC. 5. Any citizen of this State not over seventy years of age and being at the time a resident of the county, may be summoned to serve as a juror upon a coroner's inquest; and any person who shall wilfully neglect or refuse to serve as such juror when duly sum-

moned, shall, upon conviction, be adjudged guilty of a misdemeanor, and shall be punished by imprisonment in the county prison not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

“SEC. 6. The board of coroners of the county of New York may appoint a clerk, who shall receive an annual salary of thirty-five hundred dollars per year, which shall be a county charge, and payable as other county salaries are paid.

“SEC. 7. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

“SEC. 8. This act shall take effect immediately.”

The previous compensation had been fixed by chapter 565 of Laws of 168, as follows:

“SEC. 1. The Supervisors of the county of New York are hereby directed to audit the bills of the coroners of the city and county of New York for services as follows: For viewing each dead body and holding an inquest thereon, the sum of ten dollars; for summoning and swearing a jury in each inquest, five dollars; and all other fees or expenses now existing, whether by city or county usage, or by law, charged by said coroners, are hereby abolished. And no fees herein established shall be audited by said board of supervisors, or hereafter paid, except upon the sworn accounts filed with said board, and with the comptroller of said city.

“SEC. 2. This act shall take effect immediately.”

In 1873, Laws of 1873, chapter 833, the following act was passed, entitled “An Act to Regulate the Fees of Coroners :”

“SEC. 1. The coroners in and for the State of New York, except in the counties of New York and Kings, shall be entitled to and receive the following compensation for services performed:

“Mileage to the place of inquest and return, ten cents per mile.

“Summoning and attendance upon jury, three dollars.

“Viewing body, five dollars.

“Service of subpœna, ten cents per mile traveled.

“Swearing each witness, fifteen cents.

“Drawing inquisition for jurors to sign, one dollar.

“Copying inquisition for record, per folio, twenty-five cents, but such officers shall receive pay for one copy only.

“ For making and transmitting statement to board of supervisors, each inquisition, fifty cents.

“ For warrant of commitment, one dollar.

“ For arrest and examination of offenders, fees shall be the same as justices of the peace in like cases.

“ When required to perform the duties of sheriff, shall be entitled to and receive the same fees as sheriffs for the performance of like duties.

“ Shall be reimbursed for all moneys paid out actually and necessarily by him in the discharge of official duties.

“ Shall receive for each and every day and fractional parts thereof spent in taking inquisition (except for one day's service), three dollars.

“ For performing the requirements of law in regard to wrecked vessels, shall receive three dollars per day and fractional parts thereof, and a reasonable compensation for all official acts performed, and mileage to and from such wrecked vessel, ten cents per mile.

“ For taking ante-mortem statement shall be entitled to the same rates of mileage as before mentioned, and three dollars per day and fractional parts thereof, and for taking deposition of injured person in extremis, one dollar.

“ SEC. 2. A coroner shall have power, when necessary, to employ not more than two competent surgeons to make post-mortem examinations and dissections and to testify to same, and to fix their compensation, the same to be a county charge.

“ SEC. 3. Whenever, in consequence of the performance of his official duties, a coroner becomes a witness, he shall be entitled to receive mileage to and from his place of residence, ten cents per mile, and three dollars per day for each day or fractional parts thereof actually detained as such witness.

“ SEC. 4. All items of coroners' compensation shall be a county charge, to be audited and allowed by board of supervisors.

“ SEC. 5. All acts and parts of acts inconsistent with this act are hereby repealed.

“ SEC. 6. This act shall take effect immediately.”

This act was amended the next year, Laws of 1874, chapter 535, by the passage of the following amendment:

“ SEC. 1. The thirteenth paragraph of section one, chapter eight hundred and seventy-three, entitled 'An Act to Regulate the Fees of Coroners, is hereby amended by adding thereto the words, 'as

shall be allowed by the board of supervisors,' so that said paragraph shall be read as follows:

“ Shall be reimbursed for all moneys paid out, actually and necessarily by him in the discharge of official duties as shall be allowed by the board of supervisors.

“ SEC. 2. Section two of said act is hereby amended so as to read as follows:

“ SEC. 2. A coroner shall have power, when necessary, to employ not more than two surgeons to make post-mortem examinations and dissections, and to testify to the same, the compensation therefor to be a county charge.

“ SEC. 3. Section three of said act is hereby amended so as to read as follows:

“ SEC. 3. Whenever, in consequence of the performance of his official duties, a coroner becomes a witness in a criminal proceeding, he shall be entitled to receive mileage to and from his place of residence, ten cents per mile, and three dollars per day for each day, or fractional parts thereof, actually detained as such witness.”

An act was passed in 1873, referring to the practice in the city of New York, chapter 620, Laws of 1875, with the following provisions :

“ SEC. 1. It shall be lawful for the several coroners in and for the city and county of New York, with the written consent first had and obtained of the district attorney and a justice of the supreme court within said city and county, to employ any scientific expert, engineer, or toxicologist to examine the body of any person who shall have died from alleged criminal violence, or by casualty, or in any suspicious or unusual manner, and as to the cause of whose death the coroner shall have jurisdiction to inquire.

“ SEC. 2. Upon the certificate of such employment by a coroner, with the written consent of the district attorney and a justice of the supreme court, as aforesaid, being filed with the comptroller of said city and county of New York, such scientific expert, engineer, or toxicologist shall be entitled to recover and receive as a proper claim against said city and county of New York just and reasonable compensation for his services rendered in the matter of such inquest upon the request of said coroner with such written consent as aforesaid. Such just and reasonable compensation shall be ascertained and certified to by the district attorney, justice of the supreme court, and the comptroller of said city and county of New York; and in case such just and reasonable compensation shall not be so certi-

fied and paid, such scientific expert, engineer, or toxicologist shall be entitled to maintain his proper action therefor at law to recover the same.

“SEC. 3. It shall be the duty of said board of estimate and apportionment of the said city and county of New York, to provide in each and every year, out of the moneys raised by taxation, all necessary sum or sums of money for the purpose of carrying the provisions of this act into effect, and also for paying all such sum or sums as are provided for by the following section of this act.

“SEC. 4. It shall be the duty of said board of estimate and apportionment to provide for the services of any of the classes of persons mentioned in the first section of this act, which have been rendered since the first day of January, one thousand eight hundred and seventy-two, in pursuance of the direction of any coroner of said city and county, such sum of money as the district attorney, justice of the supreme court, and comptroller, as aforesaid, or a majority of them, may certify as just and reasonable; and in case of the refusal of the payment of the amount so certified, as aforesaid, by the officer whose duty it is to pay the same, the person rendering such services shall be entitled to maintain his action against said city and county of New York, or the mayor, aldermen and commonalty thereof, or other proper officer thereof, to recover the just and full value of the services so rendered.

“SEC. 5. All acts and parts of acts inconsistent herewith are hereby repealed.

“SEC. 6. This act shall take effect immediately.”

The law remained as before stated until the year 1878, when the following act was passed, entitled “An Act Relating to the Coroners of the City of New York—Their Duties and Compensation,” chapter 256, Laws of 1878:

“SEC. 1. Each of the coroners of the county and city of New York, hereafter elected as provided by law, shall be paid in full satisfaction for his services a yearly salary of five thousand dollars, and shall be allowed for contingent expenses, including clerk and office hire, and all other incidental expenses, a sum not to exceed two thousand dollars per annum, which contingent and incidental expenses shall be audited and paid as the contingent and incidental expenses of other officers of the said city and county are audited and

paid ; and said salary and allowance shall be in lieu of all his fees or compensation heretofore a charge upon the county of New York, or the mayor, aldermen, and commonalty of the city of New York.

“ SEC. 2. In all cases where the coroners of said city and county are authorized to issue a subpoena to a qualified physician to view the body of a person deceased, or make an autopsy thereon, as may be required, the subpoena of the coroner shall hereafter be issued only to one of the physicians appointed, as in this statute directed, and it shall be the duty of the physician to whom such subpoena is so issued, to make the inspection and autopsy required, and to give evidence in relation thereto at the coroner's inquest.

“ SEC. 3. The board of coroners of the city of New York shall, within five days after the passage of this act, by a writing filed in their office and published in the *City Record*, appoint four qualified physicians, who shall be residents in said city, to perform the duties in the preceding section specified, and shall be known as ‘coroners’ physicians.’ Thereafter each coroner of said city elected as provided by law, shall, on assuming office, appoint successors to the physicians herein provided for. Any vacancy in the office of coroners physicians shall be filled by the board of coroners. The board of coroners, for cause, may remove the physicians appointed by them.

“ SEC. 4. It shall be the duty of the board of estimate and apportionment of said city, from time to time, as it may determine, to fix the salary to be paid to the physicians appointed as in this statute directed for performing the duties herein provided. The salary to be paid to each of said physicians shall not in any one year exceed the sum of three thousand dollars. The salaries in this act provided for shall be paid monthly by the mayor, aldermen and commonalty of the city of New York.

“ SEC. 5. Each of said coroners heretofore elected shall attend to an equal or proportionate part of the cases in which a coroner is required to act in said city and county ; and after the thirty-first day of December, eighteen hundred and seventy-eight, there shall be paid to each of said coroners, during the remainder of his term of office, the fees or compensation now provided by law.

“ SEC. 6. So much of section one of chapter four hundred and seventy-one, as provides ‘for making said external examination, the physician shall receive three dollars; for making such autopsy he shall receive ten dollars; and such sum shall be a county charges and paid by the board of supervisors, is hereby repealed. The act, chapter five hundred and sixty-five of the laws of eighteen hundred and sixty-eight, entitled ‘An Act to Fix the Compensation of the

Coroners of the City and County of New York,' passed May four, eighteen hundred and sixty-eight, is also hereby repealed, but such repeal shall not take effect until the first day of January, eighteen hundred and eighty.

"SEC. 7. This act shall take effect immediately, except as herein otherwise specially provided."

At the same session, the Laws of 1873 were amended as follows (chapter 286, page 382):

"SEC. 1. Chapter eight hundred and thirty-three of the laws of eighteen hundred and seventy-three, entitled 'An Act to Regulate the Fees of Coroners,' is hereby amended by the insertion of a new section immediately after the third section, as follows:

"SEC. 4. The fees of jurors necessarily summoned upon any coroner's inquest shall be not to exceed one dollar for each day's service, shall be a county charge, and shall be audited and allowed by the board of supervisors in the same manner as other fees and charges mentioned in this act. But the coroner holding such inquest and summoning said jurors shall make report to the next succeeding board of supervisors after every such inquest of the names of such jurors and the term of service of each, and upon what inquest rendered, on or before the third day of the annual session in each year.

"SEC. 2. Sections four, five and six of said act are hereby numbered respectively, sections five, six and seven.

"SEC. 3. This act shall take effect immediately."

The foregoing is a resumé of the existing statutes and laws of this State, in force as well as in the State at large, as also those in force in the city and county of New York.

Special legislation for Kings and Erie, and some other counties of the State, has been passed, but nothing of particular interest to the question under discussion.

These and other considerations which have occurred to you as medical men, of the workings of the present coroners' system under your eyes in the various sections of

the State where you reside, must have long ago decided you that a change in the present system of coroner was an urgent necessity.

The medical profession owes a duty to itself in this matter.

It should for itself, and for the sake of placing such cases in proper hands, aid this movement.

If competent medical men can be placed by law in charge of such cases, an important, forward step will be taken both for your profession and for the public weal.

The influence of the State Medical Society of Massachusetts was enormous in influencing the legislature of that State to abolish the office of CORONER and to put in his place the MEDICAL EXAMINER.

The State Medical Society of New York occupies the same proud position in the EMPIRE STATE.

I ask you to endorse this movement with your unanimous vote. Let the effort when it goes to the legislature have your hearty endorsement, not alone, but let the medical profession throughout the State rally to a movement so intimately connected with its honor and its future.

I must not close without extending my thanks to the officers of the Massachusetts Medico-Legal Society, Mr. Theodore H. Tyndale ; Mr. Fred. R. Coudert, Mr. J. P. Beder, Mr. B. Roelker, of our Bar ; the Consuls-General of Germany, Russia, Italy, Greece and Spain ; for courtesies and information in the investigation of this subject.

I have the honor, gentlemen, to ask your consideration of resolutions favoring and urging this important reform upon the State Legislature.

NOTE.—At the February Session of the New York State Medical Society, (1881) the following action was taken :

The Committee on Legislation reported that having conferred with Mr. Clark Bell, they recommend the adoption of the following resolution :

Resolved, That in the opinion of this Society it is desirable for the Legislature to thoroughly amend and revise the laws of this State in regard to the office and duties of Coroners, and the Society would recommend for their consideration the recent statute adopted by the State of Massachusetts. [Substituting medical examiners for coroners.]

The report of the Committee was accepted and the resolution unanimously adopted.

The Committee on Legislation also offered the following :

Resolved, That the thanks of the Society are due to the Medico-Legal Society of New York, and to Clark Bell, Esq., for the action they have taken in reference to the matter of Coroner's law.

This resolution was unanimously adopted.

APPENDIX.

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*ELEVENTH INAUGURAL ADDRESS**
OF
CLARK BELL, Esq.

PRESIDENT OF THE MEDICO-LEGAL SOCIETY.

FELLOWS OF THE MEDICO-LEGAL SOCIETY :

A review of the labors of the year just closed in accord with our usual custom cannot fail to be of interest.

MEMBERSHIP.

At the commencement of 1890 we had on our roll of members 527 Active, 204 Corresponding and 12 Honorary, or a total of 743 names.

During the year we have elected 62 Active, 121 Corresponding and one Honorary member. We have lost by death, Active, 6 ; Corresponding, 2 ; a total of 8 names. We have dropped from the roll for non-payment of dues 56 names and have accepted 3 resignations. Leaving our membership on January 1, 1891, as follows : Active, 527 ; Corresponding, 323 ; Honorary, 13. A total of 863 names over and above all deaths and resignations, and exclusive of 56 names dropped from our published roll, who although still members of the body are suspended from its privileges until their arrears are paid, and which including these would make 919 names.

The full list of the Active and Corresponding members appears in the December number of THE MEDICO-LEGAL JOURNAL, except those temporarily suspended for non-payment of dues.

*Delivered January 14, 1891.

NECROLOGY.

The following members have died during the year :

Hon. Philip J. Joachimsen, late Judge of the City Court of New York ; Thomas C. Finnell, M. D., of New York, an ex-President of the Medico-Legal Society ; Daniel L. Gibbens, Esq., of the New York Bar ; E. J. Kilbourne, M. D., Superintendent Illinois State Hospital for Insane at Elgin, Ill., an able and distinguished man ; Prof. Dr. Max Leidesdorf, of Vienna, an eminent Austrian Scientist ; Dr. John S. Butler, one of the elder American Alienists of Distinction, of Hartford, Conn. ; E. H. Grandin, Esq., of the Bar of New York City ; Benjamin F. Peixotto, Esq., of the Bar of New York City ; Edwin Chadwick, M. B., the celebrated Sanitary Authority of London, one of our corresponding members.

THE WORK OF THE YEAR.

The following papers have been read before the Society during the year :

“The Inaugural Address of the President, Clark Bell, Esq.” pronounced January, 1890 ; “Delirium Tremens as a Defense to Criminality,” by T. Crisp Poole, Esq., Barrister at Law of Brisbane, Queensland ; “The Importance of Distinguishing Between Somatic and Molecular Death,” by Prof. L. Harrison Mettler, of Philadelphia ; Letters on “Imbibition of Poisons,” by Prof. R. C. Kedzie, of Michigan, and Prof. F. C. Robinson, of Maine ; “Report of Committee on Sexual Causes of Crime,” by E. W. Chamberlain, Esq., Chairman ; “Education *vs.* Criminality, etc.,” by Henry S. Drayton, M. D., of New York ; “The Civilization of India,” by our delegate to the Orient, Prof. Edward Payson Thwing, M. D. ; “Osmosis of Strychnia through Organic Tissues,” by George B. Miller, M. D., of Philadelphia ;

“Electricity in its Medico-Legal Relations,” by Clark Bell, Esq., of New York; “The Treatment of the Acutely Insane in General Hospitals,” by W. P. Spratling, M. D., Assistant Physician at New Jersey State Asylum, Morris Plains, N. J.; “Heredity, Criminality, etc., *vs.* Education, etc.,” by Mrs. Sophie McClelland, of New York.

Debate upon the Assembly bill proposing “The Abolition of the Death Penalty” in New York.

Action on letter of the Secretary of Belgian Society of Mental Medicine, “Appointing a Committee on Classification of Mental Diseases.”

Action approving the resolutions adopted at the International Congress of Medical Jurisprudence of June, 1889, on the recommendation to establish a chair of medical jurisprudence in all law and medical schools and in all American colleges where law and medicine were taught.

Action on letter from Prof. James, of Harvard, regarding psychical research. “Epilepsy as a Defense to Crime,” Part I. By Prof. J. J. Elwell, of Ohio. Same subject in letters and short papers by :

John P. Stearns, M. D., Supt. etc., of Hartford, Conn.; Dr. Orpheus Everts, Supt. College Hill Sanitarium, Ohio; Dr. J. Strong, Supt. Insane Asylum, Cleveland, Ohio; Walter Channing, M. D., Supt. Asylum, Brookline, Mass.; “The Proper Disposition of Insane Criminals,” by Prof. Archibald Church, of Chicago, Ill.; “The Legal Test of Lunacy,” by A. Wood Renton, Esq., of London. “The Same Subject,” by Judge A. L. Palmer, of the Supreme Court of New Brunswick; “Report of the Delegates to the International Congress of Berlin,” by Robert Newman, M. D.; “Report of the Delegates to the International Union of Criminal Law,” held at Berne, Swit-

zerland, by Dr. Emily Kempin; "The True Test of Legal Responsibility of the Insane," by Judge H. M. Somerville, late of the Supreme Court of Alabama; "Moral Insanity," by W. P. Spratling, M. D., Assistant Physician New Jersey State Asylum, Morris Plains; "Hypnotism," by Wm. M. Palmer, M. D., of Providence, R. I.; "Epilepsy as a Defense in Criminal Cases." Part 2d. By Prof. John J. Elwell, of Ohio; "Sudden and Unexpected Death," by George D. Wilcox, M. D., ex-President Rhode Island Medico-Legal Society of Providence, R. I.

The report of standing committees submitted herewith concluded the labors of the year 1890, though not made until the January meeting of 1891, viz :

(a) The Report of the Committee on Reorganization of the Morgue in the City of New York; (b) The Report of the Committee on Hypnotism; (c) The Report of the Committee on National and State Chemists, to act as Toxicological Experts in criminal trials at call of the people or the accused.

A brief notice of the other labors of the body may be made :

1. The first volume of Prize Essays contributed on the Elliott F. Shepard prize has been completed and is ready for delivery to subscribers.

2. The fourth and fifth series of Medico Legal papers have been more than half printed and are progressing, continuing the publication of the early papers of the Society from volume third, already issued, and the papers of the International Medico-Legal Congress of June, 1889, in part.

3. The Bulletin of the International Medico-Legal Congress is now nearly completed, a work of over 400 pp., and will be shortly issued to the members of that Congress, and the subscribers who are members of this

society. This has been an expensive work, and its burden has fallen heavily upon a few members of the society.

When completed it will form a notable contribution to the Medico-Legal Literature of the World. Members of the Society who have not already done so should remit \$3.00 to pay the expense of the volume and enroll in the International Congress of Medical Jurisprudence for the Session of 1892.

4. The work of nationalizing the Society has gone forward with wonderful success.

The Vice-Presidents of the Society elected at the December annual meeting from the various States and Territories of the Union and from foreign countries will best illustrate the scope and character of the labor in this regard.

6. The extension of the membership has been in every way remarkable as well in the active as in the corresponding list. It has been most conspicuous, perhaps, on the legal and judicial side.

I submit a partial list of eminent names, who are now co-operating in our labors, admitted during the year 1890—active and corresponding.

ACTIVE.

E. A. Snow, Esq., Albert T. Graeffe, Esq., T. M. Thordyke, M. D., H. C. Underhill, Esq., Franklin Pierce, Esq., Prof. T. P. Eskridge, M. D., Hon. E. T. Tallaferro, Jas. T. Green, M. D., Judge Elisha Carpenter, Judge James H. Peters, Robert Funkhouser, M. D., Wilson McDonald, Esq., E. Morgan, Jr., M. D., Richard A. Springs, Esq., Daniel L. Gibbens, Esq., Schuyler S. Wheeler, Esq., Wm. Maver, Jr., Esq., Abraham Nelson, Esq., M. J. White, M. D., H. O. Jewett, M. D., Willard C. Humphreys, Esq.

George F. Keene, M. D., Appleton Morgan, Esq., F. T. Payne, M. D., Hon. W. L. Burnap, Editor J. N. Love, M. D., Frank P. Norbury, M. D., H. B. Hill, M. D., E. H. Hotchkiss, Esq., Amos C. Lewis, M. D., Edward Pierce, M. D., D. Young, M. D., Robert Newman, M. D., Judge A. Alinge, James H. McBride, M. D., R. B. Dupree, M. D., Hon. George W. Taylor, J. T. Wilson, M.D., R. M. Suearingen, M. D., Hon. Seth Shepard, Louis Leon, M. D., Judge Albert H. Horton, Franklin R. Haines, Esq., R. P. Talley, M. D., Hume Williams, Esq., F. M. Hood, M. D., Chancellor Henry A. Gibson, Walter S. Fleming, M. D., L. C. Mial, M. D., D. A. Gorton, M. D., W. R. Smith, Esq., Professor, etc., Nicholas Senn, M.D., M. H. Fisk, M. D., Prof. James W. Putnam, Judge Thos. W. Coleman, Judge Thos. McClellan, E. Webster Davis, M. D., James M. Brady, Esq., M. Etna Worden, M. D., J. J. Scott, M. D., A. C. Smith, M. D., E. L. Macomb Bristol, M. D., N. W. Lynde, M. D., Dr. Simon Fitch Nova Scotia.

CORRESPONDING.

M. Hemar, ex-President, Med. Leg. Society, Dr. G. Luys, Paul Berillon, Dr. Paul Garnier, Prof. Ozier, M. Daned, Advocate, M. Bornaston, Dr. Giraud, Dr. Le Blond, Judge Adolphe Guillote, Dr. Paul Richer, France; Dr. Vicente de la Gardia, Dr. Jose I. Toralbas, Dr. Nicholas Gutierrez, Dr. Jose M. Carbonell, Dr. Venancio Zorilla, Ldo, Antonio Govirs, Dr. Leopold Berriels, Y. Fernandez, Dr. Francisco de los S. Guzman, Ldo Pedro Gonzales Llortenta, Cuba, Prof. Stienon, Dr. Thiey, Prof. Crim. Law, Prof. Camille Moreau, William C. Blanc, M. D., Belgium; Prof. Dr. August Forel, Prof. Dr. K. von Lilienthal, Prof. Dr. Carl Stoos, Judge Gustave Correvon, Dr. Prof. F. Meilli, Dr. Prof. Alfred Gautier, Judge Emil Zurcher, Prof. X. Gretener, Dr. Picott, Judge, Prof.

George Favey, Switzerland; J. G. Patijin, Advocate, J. G. C. P. Vrythoff, Prof. G. A. Van Hamel, A. O. H. Tellegen, M. D., Dr. J. van Deventer, Dr. G. Jelgersma, I. D. Fransen van de Putte, Minister of the Colonies, P. E. Hubrect, Secy. General, Dr. A. H. van Andel, D. A. Hertz, Prof. Dr. C. N. Kuhn, Dr. S. Doedes. Breuning, Dr. S. J. Halbertsma, Dr. G. J. C. J. Schouten, Holland; Dr. Antonio, Henrigues de Silva, Hon. J. J. Tavario, Portugal; Hon. Prof. M. A. Wulfert, Russia; Prof. Dr. C. Goss, Denmark; Hon. Pierre Ivan Dautschoff, Hon. George Zgoueroff, Alexander Djakovitsch, Bulgaria; Director A. Grotenfelt, Findland; Erster Staatsanwalt Schwarz, Germany; Dr. Jur. Jehan Berg, Dr. Jur. Harald Smedal, Norway; Dr. A. O. Winroth, Dr. A. E. W. Upperstorm, Sweden; Geo. A. Nenadviotch, Editor, Hon. Panta J. Savitch, Servia; Prof. Dr. Jeronimio Vida, Spain; Dr. Hugo Beck, Emerich V. Havas, Budapest; Barone Garofalo, Dr. Fernando Puglia, Dr. Guglielmo Canterano, Dr. G. Andriani, Dr. R. Collella, Italy; Tonza Kawa Moto, M. D., Kanchiro Takaki, F. R. C. S., Dr. Kensai Ikeda, Tsunatsune Hashimoto M. D., Japan; Hon. L. E. Bleckley, Chief Justice, Ga.; Hon. R. D. Ray, Chief Justice, Mo.; Hon. John A. Peters, Chief Justice, Maine; Hon. George P. Raney, Chief Justice, Fla.; Hon. Willis Van Deventer, Chief Justice, Wyoming; Hon. Guy C. A. Corliss, Chief Justice, N. Dakota; Hon. C. J. Stone, Chief Justice, Ala.; Hon. C. A. Thayer, ex-Chief Justice, Oregon; Hon. D. Follett, Presiding Justice, Court of Appeals, New York; Hon. John W. Stayton, Chief Justice, Texas, Hon. Thomas H. Woods, Chief Justice, Miss.; Hon. Henry A. Blake, Montana; Charles. Mercier, M. B., London; Dr. Richard J. Dunglison, Phila. Pa.; Hon. Charles B. Andrews, Chief Justice, Conn.

Frederic Bateman, M.D., Norwich, England; Prof. Cæsar Lombroso, Italy; Havelock Ellis, M.D., London, England; Prof. Matthias Duval, Director of the Laboratory of Anthropology Paris, France ; Prof. Bernheim, Nancy, France ; Prof. Liegeois, Nancy, France ; Prof. Beaunis, Nancy, France ; Judge Walter Clark, Supreme Court, Raleigh, N. Carolina; Chief Justice A. C. Snyder, West Virginia; Chief Justice Joseph L. Lewis, Kentucky; Chief Justice Joseph Given, Iowa; Chief Justice W. H. Batty, California; Chief Justice J. C. Helm, Colorado; Judge Byron K. Elliot, Supreme Court of Indiana; Judge Wm. E. Beck, ex-Chief-Justice of Colorado ; Judge E. W. Seymour, Supreme Court of Connecticut; Judge A. E. Maxwell, ex-Chief Justice of Florida ; Judge H. L. Mitchel, Supreme Court of Florida; Judge M. A. Blandford, Supreme Court of Georgia ; Judge Thomas J. Simmons, Supreme Court of Georgia; H. W. McLaughlin, Denver, Colorado, Prof. Kemp P. Battle, University of North Carolina; Chas. Edgworth Jones, Esq., Augusta, Georgia.

PORTRAITS.

5. The publication of groups of portraits of Legal, Judicial and Scientific members of the body and the International Congress has excited great interest in the Society and among its contemporaries home and abroad.

It will be continued during the year to come and will also embrace the Judiciary of North America under the auspices of THE MEDICO-LEGAL JOURNAL.

FINANCES.

The total receipts of the Treasurer for the year 1890, as reported by that officer, were \$1,121.66, and the total disbursements as near as I can ascertain them, \$1,040.76. Leaving a large amount unpaid dues in arrears due from members.

THE PROGRESS OF THE SCIENCE.

The Science of Medical Jurisprudence is steadily and rapidly advancing. The Medical profession have been more awake to its importance and value in the past than the Legal.

This is now changing. Men of eminence, both upon the Bench and at the Bar, are recognizing its true relation to the Bar.

The study of the science progresses, and has been stimulated greatly by the labors and influence of this body and in other auxiliary associations :

1. The Medical Jurisprudence Society of Philadelphia is in a most flourishing condition. Its officers are :

President, Henry Leffman, M. D.; 1st Vice-President, J. Levering Jones; 2d Vice-President, J. Hendric Lloyd, M. D.; Secretary, Francis X. Dercum; Treasurer, Paschal H. Coggins; Recorder, Milton Bradfield, M. D. It has a large membership, and original papers are read monthly at its sessions.

2. The Medico-Legal Society of Chicago has made great progress and is doing good work. Its officers are :

President, Dr. E. J. Doering; Vice-Presidents, Dr. B. Bettman, Judge O. H. Horton; Secretary, Dr. Ed. B. Weston; Treasurer, Dr. L. L. MacArthur.

3. The Medico-Legal Society of Denver, Colorado, has been formally organized. Its officers are as follows :

President, Judge Geo. Allen; Vice-President, Dr. J. W. Graham; Secretary, Dr. H. W. McLanthlin; Treasurer Mr. William Clark; Board of Directors, Dr. J. T. Eskridge, Chairman, Dr. H. W. McLaughlin, Judge E. O. Le Fevre.

4. The Medical Examiners of the State of Massachusetts, under the new law abolishing the office of coroner, organized a society called the Medico-Legal Society of Massachusetts.

While lawyers or chemists, as such, are not eligible to membership, this society has by its labors contributed very important and most valuable contributions to forensic medicine.

The Medico-Legal Society of Rhode Island is organized in the same manner and upon the same lines as that of Massachusetts, and it is doing a like work. Its officers are :

President, J. Howard Morgan, M. D., of Westerly ; Vice-President, C. A. Barnard, M. D., of Centredale ; Secretary and Treasurer, H. Goodwin MacKaye, M. D., of Newport ; Censors (one for each county), G. D. Wilcox, M. D., Providence County ; J. Winsor, M. D., Kent County ; G. L. Church, M. D., Bristol County ; P. K. Taylor, M. D., Washington County ; H. Goodwin MacKaye, M. D., Newport County.

The annual meeting and election of officers is held the third Thursday in July.

All meetings are held in Providence.

The only paper read before the Society in 1890 was by P. K. Taylor, M. D., and was entitled "Some Desirable Changes in the Medical Examiner Law." This was read at the meeting held April 17th.

6. A movement is on foot to organize a similar society for Wisconsin, in the city of Milwaukee.

It will be thus seen that in America much greater interest is felt in the science than in other countries at the present time.

7 The International Congress of Medical Jurisprudence organized in this city in June, 1889, for a second session in 1892, continues to attract attention, especially in foreign countries.

The following correspondence between your chairman and Mr. Secretary Blaine illustrates the sympathy

felt by the Government of the United States for the success of the movement, and has been greatly instrumental in interesting eminent men of science in foreign countries to operate in the work.

Office of the President of the Medico-
Legal Society of New York, No. 57
Broadway, N. Y., March 31st, 1890. }

Hon. James G. Blaine, Secretary of State, Washington, D. C.

DEAR SIR.—I have the honor to enclose a circular we are sending in the English, French, German and Spanish languages, to the various countries of the world, asking co-operation with the International Medico-Legal Congress, which will be held in 1892 in this country.

Its first session was held in June, 1889, of which I send the preliminary transactions and roll of delegates.

The French circular enclosed shows the officers at this moment, and as Vice-Presidents for the various countries are announced, they will be added to those already appointed. Inspection of the names of the eminent men, who have already lent their names to this project, emboldens me to request the countenance of the American Government, to this movement in aid of this science.

Among foreign peoples, the knowledge of the approval of the Home Government, is of vast consequence to the success of scientific endeavor.

The aid, lent by the French Government, to the Scientific Congresses in Paris last year, gave an enormous impetus and importance, to that wonderful success, which added new lustre to the glory of France.

We do not desire any pecuniary assistance from the Government of the United States.

The letters you so kindly sent me last summer were of enormous value to me, in interesting eminent men of science, in the countries of Europe in the movement.

Such a letter of sympathy, with the objects and purposes of our present endeavor, as you can give, will I think be of great value, and will in many countries, especially the Spanish speaking countries on this continent, be of commanding importance.

I am, sir, with high personal regard,

Very faithfully yours,

CLARK BELL.

Department of State, Washington, }
April 17, 1890.

Clark Bell, Esq., President of the Medico-Legal Society, No. 57 Broadway, New York City.

DEAR SIR.—I have received your letter of the 31st. ultimo, enclosing copies of circulars which you are sending to the various countries of the world, inviting co-operation for the Congress, which will be convened in 1892 in the United States, for the discussion of medical jurisprudence.

The importance of such a gathering as you propose cannot, it would seem, be overestimated. The intelligent discussion of scientific questions, especially those which so closely affect the human family, by a body of gentlemen learned in medico-legal science, must prove of especial value, and should be worthy of every effort, which has for its mission the amelioration of the condition of mankind.

My individual sympathy in the objects and purposes of your conference is very great, and I trust that the results of such a meeting as you propose may correspond, to the aims you have in view, as I have no doubt they will.

I am, dear sir, very truly yours,

JAMES G. BLAINE.

The following gentlemen have already given their promise to contribute papers to that congress :

Prof. Dr. Paul Kowalewsky, of Kharkoff, Russia ; Prof. Dr. Mierzezewski, St. Petersburg, Russia ; Dr. Chas. H. Hughes, St. Louis, Mo. ; Dr. Daniel Clark, Toronto, Canada ; Dr. Thomas G. Morton, Philadelphia, Pa. ; Dr. Jules Morel, Ghent, Belgium ; Clark Bell, Esq., New York City ; A. Wood Renton, Esq., London, England ; Judge H. M. Somerville, of Alabama ; Prof. Marshall D. Ewell, of Chicago ; Dr. S. V. Clevenger, of Chicago ; Dr. Edward Payson Thwing of, N. Y. ; Dr. Henry Leffman, of Philadelphia ; Moritz Ellinger, Esq., of N. Y.

I submit herewith a circular letter, which has been sent and will be sent to men of science in foreign countries, which has already been printed by this Society in the English, French, German and Spanish languages for use in foreign countries, together with a list in part of the present enrolled members of that Congress and its officers, to illustrate the importance and significance of its labor, and the relation it bears to the promotion and growth of Medical Jurisprudence, in our era of the world's civilization, and I call on all students of the science in all countries to co-operate in this important movement.

I will thank the Vice-Presidents to forward to me the title of the papers, they will submit or that have been or will be contributed from each country.

FOREIGN.

The interest abroad during the past year has been evinced more in the acquisition of members in the Active and Corresponding list. In no country, however, has there been so much progress as our own.

I have not been made aware of the organization of any new Medico-Legal Society in any foreign country,

though the subject is under consideration in Italy and other countries.

The Medico-Legal Society of France continues its work, the labor reaching the public in the columns of "Annales de Hygiène et de Medicine Legale."

A perusal of the eminent names added to our Corresponding list will show the interest felt in foreign lands and in the several States of the American Union in the work of the body.

ELECTRICITY AND THE DEATH PENALTY IN NEW YORK.

Only one capital execution has occurred in 1890 under the new statute.

The details, as they were given to the public press, gave rise to severe criticism and animadversion against the law.

The provisions of the statute restricting publications had antagonized many journals, and the witnesses of Kemlers execution, with few exceptions, mistook the muscular action frequently accompanying instantaneous death or seemed not to understand them, and an effort was made by the enemies of the law on the one-hand and the friends of the abolition of capital punishment on the other, to convey the impression that death was not instantaneous, and was accompanied by pain and suffering.

Nothing, however, was farther from the truth. The death was unaccompanied by any conscious pain, was instantaneous, and characterized by the usual phenomena resulting from decapitation, piercing the brain with a bullet, and kindred methods, and nothing more.

Those best qualified to judge are positive that there was no consciousness after the instant that the current was applied.

The constitutionality of the law has been twice passed upon by the Supreme Court of the United States and by

the court of last resort in New York and its provisions sustained by these tribunals.

Calmer and cooler judgment, is replacing the excitement aroused by the press, and there is no apparent likelihood of any change in the law, until the moment arrives when the death penalty for crime is abolished.

CRIMINALITY AND CRIMINAL ANTHROPOLOGY.

Recent investigations of careful writers on both sides the Atlantic have brought to the attention of jurists and publicists, the necessity of considering from the foundations, not so much our penal statutes, as the criminal himself, and the best methods to be pursued by society in dealing with him.

The writings of Lombroso, of Ferri, and others of the Italian school, the work of the International Congress, both at Rome and later in Paris in 1889, the array of eminent men who have taken up this discussion in France, Germany, England and in our own country, has excited enormous interest throughout the scientific world. The International Union of Criminal Law, founded recently and holding its first public congress in Brussels in 1889, and its second congress at Berne, Switzerland, in August, 1890, present sharply defined, the magnitude and importance of the discussion now going on.

The Medico-Legal Society named delegates to the congress at Berne, and one of these attended, and a report of that delegate has been made to the body.

It has occurred to me, that the study of this subject could be better advanced by the organization of a separate section upon Criminality and Criminal Anthropology, whose labors could be conducted by a chairman, secretary and treasurer, and if needs be a special com-

mittee who could act *en rapport* with the International Union of Penal Law directly and wholly upon the subjects involved.

This section could be composed of such members of this society as desire to devote any attention to the study, and to all other persons, whether members of the society or not, who enrolled and paid an enrolling fee of \$1.25 to cover expenses of printing, postage, etc.

Three members of the Union now reside in the United States, some of whom would take charge of the organization, and their labors could be annually reported to this body, and to the International Union.

If this recommendation meets with favor, the chair will name a provisional committee to take charge of the initiatory labor.

THE MORGUE IN NEW YORK.

It has been a source of surprise to scientists that we have not in the great metropolis of the nation taken steps to place the morgue on a proper scientific basis.

This subject has been previously brought to the attention of this body by me. A committee has considered the subject and makes a report at this meeting recommending that the morgue be reorganized and placed on a scientific basis, after the manner of the morgue in Paris and under the charge of the best scientific skill commensurate with the civilization of our day and the needs of the city.

No greater name in medical and toxicological science exists in France than Brouardel, who as the head of the morgue made a seat and centre for toxicological and other germane studies that reflects the greatest honor upon France.

We have men of the highest skill here who should oc-

copy a similar relation to the morgue in New York, and if the press the Academy of Medicine and other powerful organizations second our movement, this reform should have speedy realization.

NATIONAL AND STATE CHEMISTS.

The committee having in charge this subject make a report favoring the appointment of a national chemist at the seat of Government, with a salary that would secure the highest and best service, and a fully equipped laboratory second to none in the world, and recommend that the services of this sworn public official should be at the call of both the people, and of all persons accused of crime, and on trial in the national tribunals.

They also recommend similar action in the several states for the state tribunals.

To state these reforms should alone enlist thoughtful minds, and all legislators to consider them with favor.

The subject was laid before the American Chemical Society in a short paper by myself, at its recent session in Philadelphia on 31st December, 1890, and the aid of that organization invoked in the movement.

HYPNOTISM.

No question of the hour excites more interest among scientific observers than this.

The committee of this society have been too scattered to secure a general conference or session.

Observations have been conducted by the several members. A preliminary report is now made to the society from that committee, defining the present status of the science or phenomena, and laying out a plan of conducting examinations on the undeveloped and doubtful problems.

The recent remarkable case of Ayraud and Bompard which have occupied the French tribunals bring into sharp relief the position taken by the School of Nancy and those scientists who hold that crime can be committed unconsciously by suggestion, and the view of Brouardel, Motet, and others who deny these conclusions.

This and other questions of this wonderful phenomena, are well worth the attention of medical men and scientists, and will constitute an important field of the labor of the society in the present year.

If sufficient interest is taken I should recommend the formation of a separate section for the study of this phenomena, open to non-members of the society at a nominal enrolling fee, under the charge of a chairman, secretary and treasurer of the section.

PSYCHICAL RESEARCH.

Students of psychology will understand the public interest felt at the present moment in the interesting studies new going forward on both sides the Atlantic.

The communication of Prof. James, of Harvard, laid before the body shows the field of inquiry of that eminent psychologist. It is quite germane to our studies.

It could be observed and studied by either a standing committee of the body, or by a section acting in co-operation with other inquirers, as thought best. I commend it to the attention of this society, and if sufficient interest is taken will cheerfully co-operate in the labor, and to that end invite suggestions and correspondence from members or others who take an interest in this study.

PRIZE ESSAYS.

The award of the prize of 1889 and 1890, offered by myself and the society has not yet been made, owing to the difficulty of obtaining unanimous action and divergent views, in committee the difficulty of meeting and other circumstances have retarded action.

A prize has been offered by the society of \$100 for the best essay, and \$50 for the second best, which will close on April 1, 1891, and to which it is hoped many will contribute.

THE LIBRARY.

It is a source of regret that our library is still houseless and homeless. It is to be hoped that provision will be made in the near future for its care.

Members should however feel under obligations to send one volume each year, to swell the number of its volumes, and a special committee, of which the librarian should be chairman, should be named, to arrange some plan to bring its treasures where the members could see and use them.

FINALLY.

The path that lies before this body for the coming year is to complete and round up the work we have on hand, that which we have already undertaken. This will task all our energies and require all our resources, with thanks for a continuance of that support which has so greatly encouraged the chair and for a unanimity in our work, that is most significant and charming I invite you to continue in the labor that has so greatly crowned our efforts, during the year just closed.

*REPORT OF THE STANDING COMMITTEE ON
NATIONAL AND STATE CHEMISTS.*

To the Medico-Legal Society—Gentlemen:

The standing committee to whom was referred the recommendations of the President, Mr. Clark Bell, in his inaugural address to the society, pronounced January, 1887, and subsequently renewed by him at various times, regarding the appointment of a national chemist by the Government of the United States, to be placed at the service of the Government and accused persons in all criminal trials, and for similar action in the States, beg leave to submit the following

REPORT.

That we have carefully considered the matter in all its aspects, and the present methods of procuring suitable chemical evidence in criminal trials, both in the State and national courts, and we recommend to the Society the adoption of the following resolutions, which we recommend that the Society submit to the Congress of the United States and the State Legislatures.

Resolved, That the creation of an official, to be known as the National Chemist, in the service of the Government, with a salary sufficient to command the highest available talent, and the establishment of a thoroughly equipped laboratory, which should be at the disposal of the Government or persons accused of crime, or of the State authorities, under suitable regulations, would be a measure that would reflect credit upon the nation, greatly assist the authorities in the administration of

justice, and elevate the character and standing of expert testimony in the courts.

2. *Resolved*, That the best interests, of the people of the various States of the Union, would be greatly subserved, by creating in each State an official to be known as the State Chemist, with sufficient salary to insure high skill in the discharge of official duty, and by establishing a competent and thoroughly equipped chemical laboratory.

That it be the duty of the State Chemist to act as well for the State and public authorities, as for all accused persons in all criminal trials, at the expense of the State.

All of which is respectfully submitted.

Dated New York, December, 1890.

VICTOR C. VAUGHAN, PH. D.,
Chairman.

H. A. MOTT, JR., PH. D., LL.D.,
Analytical Chemist.

GEO. B. MILLER, M. D.,
CLARK BELL,

President Medico-Legal Society, *ex-officio*.

NOTE.—This Report was unanimously approved and adopted at the meeting of the Medico-Legal Society, held January 14, 1891.

REPORT OF THE STANDING COMMITTEE ON THE MORGUE.

To the Medico-Legal Society :

The Committee to whom was referred the recommendations of the President, relative to the reorganization of the morgue in the city of New York, beg leave to submit the following

REPORT.

We have considered the subject as one entitled to be worthy the attention of the municipal authorities of the city, and are of the opinion that if the attention of Mayor Grant was called to the subject, and the pride of the civic authorities of the city aroused, important reforms would be speedily inaugurated.

We submit that the basis of the proper organization of the morgue should be substantially that adopted in the city of Paris, France.

The chief should be selected from one of the ablest physicians in the city, thoroughly informed on all questions of pathology and toxicology, and his staff should be composed of specialists in every branch of scientific research, so as to be able to conduct post mortems, to insure the detection of crime, in case it has been committed, even in the most obscure cases.

The importance of a morgue, thus equipped and conducted, as a factor in the detection of crime, cannot be overestimated.

At the morgue of Paris, under the leadership of Professor Brouardel, the greatest of living French toxicolo-

gists, the School of Study and Observation by his corps of assistants, was second to none in the world.

It is certain that the Academy of Medicine, and the entire medical profession of New York, would co-operate with the mayor and the civic authorities in any intelligent movement to place our morgue on a higher scientific basis. The salary of the chief should be the highest salary paid to any medical man in the city, and it should be sufficient to command the services of the ablest talent in the profession of chemistry and medicine, and especially such as had distinguished themselves in pathological studies and morbid anatomy.

We recommend that the subject be brought to the attention of the mayor and the municipal authorities by a committee to be named by the Society, and that the Medico-Legal Society recommend the reorganization of the morgue, substantially upon the basis of that of Paris, and pledge its efforts to elevate the standard of the scientific service of the morgue, and that the Committee be instructed to urge that at its head be placed the ablest scientific talent, within the reach of the city authorities.

Dated December 31st, 1890.

CLARK BELI., Chairman.

SIMON M. EHRLICH,

M. J. B. MESSEMER, M. D.,

HENRY A. MOTT, JR., PH. D.,

PHIL. L. DONLIN, M. D.

NOTE.—Approved and adopted unanimously by the Medico-Legal Society, January 14, 1891.

*PRELIMINARY REPORT OF THE STANDING
COMMITTEE ON HYPNOTISM.*

To the Medico-Legal Society.

The Committee on Hypnotism beg leave to report, in part, a few facts indicative of progress in scientific inquiry.

The literature of the subject is growing opulent—a thousand titles are now recorded. The number of reputable investigators increases. Taken out of the hands of those whose aims and methods cast discredit on it, hypnotism is studied by members of each of the learned professions, vitally related as it is to the interests of which they are the natural custodians. It is safe to say that these facts are established :

1. Hypnosis, or artificial trance-sleep, is a subjective phenomenon. Here modern science joins issue with old-time mesmerism, the theory of some mysterious efflux from the operator. Hypnosis may be self-induced through expectation alone, through fright, by religious ecstasy or any enrapturing emotion.

2. Hypnosis is not in itself a disease. Neurotic conditions predispose one to the trance-sleep, but the strongest minds have also been enthralled. Their recorded visions have been an open book for centuries.

3. Hypnosis is recognized in three stages—lethargy, somnambulism and catalepsy. The transition may be immediate. The second is instantly induced in trained sensitives.

4. Hypnotism has been serviceable in medical and sur-

gical practice, both as a therapeutic agent and in some cases as an efficient and safe anæsthetic.

5. The illusory impressions created by hypnosis may be made to dominate and tyranize the subsequent actions of the subject. The following legal aspects present themselves:

1. Has the sensitive sought the operator, or has the operator used undue influence to gain control of him?
2. Are proper witnesses present?
3. Are possible elements of error eliminated, such as self-deception, simulation and malingering?
4. Is hypnosis a justifiable inquisitorial agent?
5. Do we need a reconstruction of the laws of evidence in view of the perversion—visual and otherwise—created by the trance?
6. Is any revision of the Penal Code desirable in view of these facts?

Finally, should there be legal surveillance over private experiments or public exhibitions?

The committee will welcome suggestions on these or other points, and any instructions as to methods of investigation of the matter referred to them by the Society.

Respectfully submitted,

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International Medico-Legal Congress
OF 1891.
UNDER THE AUSPICES OF THE
MEDICO-LEGAL SOCIETY.

Office of the President,

No. 57 BROADWAY.

NEW YORK, April 1st, 1891.

DEAR SIR :

The session of June, 1889, of the International Congress of Medical Jurisprudence was successful beyond the most sanguine expectations of its promoters. It perfected a permanent organization and provided for the selection of an additional Vice-President from each State and Territory of the American Union, and from each foreign province, State and Country who had members in the organization that took an interest in the success of the movement.

Future meetings were authorized to be called by the Executive Officers, a list of whom are herewith sent you.

The expenses of publishing all the Papers read at this Congress, with a record of its transactions and the proceedings of the Banquet, fill a large volume, the expense of which has been about \$800.00. The Executive Officers were authorized to elect additional members into the organization, the only expense of which is the enrolling fee of \$3.00, which entitles the member to the Bulletin free.

Will you unite in this movement with a view of making it International, and will you suggest a suitable name for Vice-President from your State, Territory, Province or Country, if one has not already been sent. If this effort is received with favor by the members of the Medico-Legal Society—Active, Corresponding and Honorary alone, without counting others—it will provide for the publication of the transactions and the Papers read before the Congress, and lay on firm and sure foundations the International work of promoting the advancement of Medical Jurisprudence, not alone within the United States of America, but throughout the civilized world.

Your co-operation in this effort is earnestly solicited in your locality, and your name will be laid before the Executive Officers for enrollment as a member on receipt of the enrolling fee, which can be sent to any officer of the body.

The Officers elected by the Congress held June 4th to 7th, 1889, in New York, were as follows:

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The President was empowered and directed by the Congress to appoint additional Vice-Presidents for the various States, Territories, Provinces and Countries, which will be done in the future.

Members of the Congress receiving this circular, who have not sent their enrolling fee, will please do so, and circulate this among those who take an interest in the Science.

Your early response is requested to either of the undersigned.

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